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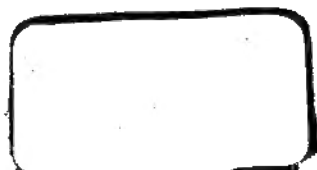
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TO THE

EXECUTIVE DOCUMENTS

OF THE

HOUSE OF REPRESENTATIVES

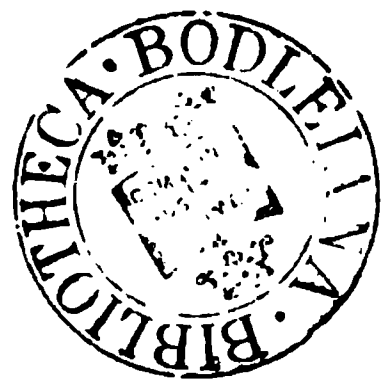
FOR THE

THIRD SESSION OF THE FORTY-SIXTH CONGRESS,

1880-'81.

IN 30 VOLUMES.

VOLUME 29.—No. 81.



WASHINGTON:
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1881.

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DECISIONS

OF THE

FIRST COMPTROLLER

IN THE

DEPARTMENT OF THE TREASURY OF THE UNITED STATES;

WITH

AN APPENDIX.

By WILLIAM LAWRENCE,
FIRST COMPTROLLER.

VOL. I.—SECOND EDITION.
1880.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1881.

TABLE OF FIRST COMPTROLLERS.

Name.	Whence appointed.	Date of commission.	Expiration of service.
NICHOLAS EVKLEIGH..	South Carolina ..	September 11, 1789	Died April 16, 1791
OLIVER WOLCOTT, JR.	Connecticut	June 17, 1791	February 2, 1795
JONATHAN JACKSON ..	Massachusetts ...	February 25, 1795	September 1, 1795
JOHN DAVIS .....	....do	June 26, 1795	June 30, 1796
JOHN STEELE	North Carolina ..	July 1, 1796	December 14, 1802
GABRIEL DUVALL	Maryland	December 15, 1802	November 21, 1811
RICHARD RUSH	Pennsylvania....	November 22, 1811	February 10, 1814
EZEKIEL BACON	Massachusetts ...	February 11, 1814	February 28, 1815
JOSEPH ANDERSON....	Tennessee	February 28, 1815	December 15, 1835
GEORGE WOLF	Pennsylvania....	June 18, 1836	February 28, 1838
JAMES N. BARKER....	....do	February 23, 1838	April 19, 1841
WALTER FORWARD ...	....do	April 6, 1841	September 13, 1841
JAMES W. McCULLOH.	Maryland	April 1, 1842	May 31, 1849
ELISHA WHITTLESEY..	Ohio	May 31, 1849	April 30, 1857
WILLIAM MEDILL .....	....do	March 26, 1857	April 30, 1861
ELISHA WHITTLESEY..	....do	April 10, 1861	Died Jan. 7, 1863
ROBERT W. TAYLER ..	....do	January 14, 1863	Died Feb. 25, 1878
ALBERT G. PORTER ...	Indiana	March 5, 1878	June 10, 1880
WILLIAM LAWRENCE..	Ohio	July 15, 1880

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INTRODUCTION.

DUTIES OF THE FIRST COMPTROLLER—REASONS FOR REPORTING DECISIONS.

It has been deemed proper to commence the publication of such of the decisions of the First Comptroller as are supposed to be of a general character and sufficiently important to justify this course.

If any existing publication readily accessible to the public defined with sufficient fullness, in a form to be generally understood, the duties of the First Comptroller, they would not be here stated. It is only because there is none such that a brief outline is now with some reluctance attempted, both as a means of information, and as presenting some of the reasons for reporting decisions.

The laws of Congress have made the First Comptroller, in some measure, the law officer, or, as he may be in one sense regarded, the judicial officer, not merely of the Department of the Treasury, but for all the other executive departments, and to a certain extent as to the legislative and judicial branches of the Government, on questions affecting the receipt and expenditure of public money.

He is required to settle the accounts of the Treasurer of the United States, and thus to judge of the sufficiency and legal validity of the great mass of vouchers of various forms and under many laws presented as the evidence of all payments from the Treasury. (Rev. Stats., 305, 311.)

Out of this duty has grown a usage, not only proper but necessary, for officers in every branch of the public service, before making payment of salaries or other demands against the Government, when a doubt may arise, to call upon the First Comptroller for a decision whether payment can be lawfully made.

In these forms, as this volume of decisions will show, a great variety of the most difficult and important questions of law is presented for decision. It is not desirable now to enumerate even the classes of questions which arise, much less to go into detail, but among them may be included:

I.—Questions involving controverted titles to Government bonds and others affecting the liability of the United States, arising, as such ques-

tions do, under the laws of Congress, of the several States and Territories, and of foreign nations. (See Putnam's case, this vol., 208; Salu's case, *Id.*, 211; Klink's case, *Id.*, 242.)

II.—Questions relating to the construction of laws prescribing salaries and fees of officers and agents of the Government. (Herndon's case, this vol., 45; Viser's case, *Id.*, 75; Ashton's case, *Id.*, 162; Hunter's case, *Id.*, 151; Wade's case, *Id.*, 300; Clerk's case, *Id.*, 303; Reporter's case, *Id.*, 306; Bender's case, *Id.*, 317; Richardson's case, *Id.*, 369.)

III.—Questions as to the authority of heads of Departments and others to appoint agents in the execution of laws. (Birch's case, this vol., 154; Inspector's case, *Id.*, 201; Bender's case, *Id.*, 317.)

IV.—Questions as to what expenditures are authorized by the appropriation acts, which authorize the vast disbursements from the Treasury. (Wood's case, this vol., 1; Tillamook case, *Id.*, 138; Arsenal case, *Id.*, 147.)

V.—Questions whether laws make appropriations, or only give authority to officers in pursuance of appropriations elsewhere made. (Canal case, this vol., 141; Bundy's case, *Id.*, 184.)

VI.—Questions as to the various kinds of appropriations, whether annual, permanent annual, or permanent specific; and as to each, whether limited or indefinite in amount; and others of a different character. (Ashton's case, this vol., 162.)

VII.—Questions as to the ownership of drafts, the sufficiency of indorsements, and the right of courts to appropriate them to creditors of their holders. (Draft case, this vol., 11; Rhawn's case, *Id.*, 109; Moyer's case, *Id.*, 116.)

VIII.—Questions as to the liability of the Government for refunding taxes. (Flack's case, this vol., 187; Savings Bank case, *Id.*, 194.)

IX.—Questions as to the liability of the Government to refund moneys to purchasers of public lands erroneously sold. (Rev. Stats., 362, 2363; act June 16, 1880, 21 Stats., 287.)

X.—Questions as to the liability of officers to the Government, and the enforcement of prompt payment thereof. (Rev. Stats., 269.)

XI.—Questions arising on appeals from the Sixth Auditor. (Rev. Stats., 270, 277.)

XII.—Questions as to the disbursement of moneys by the Commissioners of the District of Columbia under various laws. (Audit case, this vol., 37; Police case, *Id.*, 57; Richey's case, *Id.*, 85; Drawback case, *Id.*, 158; Safford's case, *Id.*, 263; Clerk's case, *Id.*, 303.)

These are given only by way of example, and by no means as an

enumeration *in extenso*. The detailed statements of the work in the several divisions of the First Comptroller's office and other branches of the Treasury Department, found in the appendix to this volume, present other subjects of jurisdiction.

In matters reported by the First and Fifth Auditors, and demands settled by the Commissioner of the General Land Office, the First Comptroller may review the evidence and increase or reduce or refuse to allow payment of amounts stated as due to claimants by those officers. (Rev. Stats., 269.) On appeals from the Sixth Auditor he exercises a similar jurisdiction. (Rev. Stats., 270, 277.)

As the First Comptroller is required to countersign all warrants which are "warranted by law" for the payment of money from the Treasury for every department and branch of the Government, he has, on questions of law, apparent on the papers on which such warrants are issued, a supervisory authority reaching almost every question of law that can arise as to the legal validity of all claims against the Government. (Bender's case, this vol., 317; *Id.*, 380.)

Warrants for payments from the postal revenue are not subject to review by the First Comptroller. (Rev. Stats., 277, clause 7.)

Most of the revenues of the Post-Office Department are not actually paid into the Treasury, and none of them are "*covered*" by warrant of the Secretary of the Treasury to the debit of the Treasurer on his general account with the Government. (Rev. Stats., 408, 3617.)

Moneys actually deposited with the Treasurer and assistant treasurers on post-office account, do not go into the general fund of the Government, but are kept subject to the control of the Postmaster-General. (Rev. Stats., 396, 406.) As all the revenues of the Post-Office Department are used, when collected, in defraying the expenses of the postal service, (Rev. Stats., 3861,) those expenses are not paid by warrants of the Secretary of the Treasury. (Rev. Stats., 395.)

In this respect the Post-Office Department differs from all other Departments of the Government.

Its receipts and expenditures do not enter into the general account which the Treasurer renders to the First Auditor of the Treasury, to be audited and adjusted by the latter officer and the First Comptroller. (Rev. Stats., 3642.) But the Treasurer renders a quarterly account of them to the Auditor of the Treasury for the Post-Office Department, and the latter officer transmits quarterly statements of the postal receipts and expenses to the Secretary of the Treasury. (Rev. Stats., 277.)

In what has been said, no reference has been made to the salaries of the Postmaster-General, of his assistants, and of all other persons em-

ployed in the Post-Office Department at Washington, (except in the city post office,) nor has reference been made to the contingent expenses of said Department. The salaries and contingent expenses in question are paid out of the general funds in the same manner as salaries and contingent expenses of all other Departments of the Government are paid.

Pursuant to appropriations by Congress, they are paid by warrants of the Secretary of the Treasury, countersigned by the First Comptroller. These are included in the Treasurer's general account, which, after examination by the First Auditor, is reported to the First Comptroller for his decision thereon.

No money can be paid from the general fund in the Treasury of the United States until the warrants issued by the Secretary of the Treasury have been countersigned by the First Comptroller, who must see that they are "warranted by law." (Rev. Stats., 260.)

The law requires that the Treasurer shall, at all times, submit to the Secretary of the Treasury and the First Comptroller, or either of them, the inspection of the money in his hands. (Rev. Stats., 305.)

In the office of the Sixth Auditor are combined, as to accounts relating to postal revenues, the duties of an auditor, a comptroller, and a register, except in cases of appeal to the First Comptroller.

As to those demands for which an action may be maintained in the Court of Claims, and those which may be referred to said court by the head of an Executive Department, the decision of the First Comptroller against a claim may, in that court and on appeal to the Supreme Court, be reviewed. (Rev. Stats., 1059, 1063; Police case, this vol., 57.) His decision in favor of a claim is subject to no review.

Balances certified by the Comptroller are to a limited extent subject to revision in the circuit and district courts of the United States, when suits are instituted by the United States, to recover said balances when due from public officers held to be in default. (Viser's case, this vol., 75.)

All moneys disbursed by paymasters in the Army and Navy, quartermasters, pension agents, Indian agents, disbursing clerks, disbursing agents specially appointed, United States marshals, and all other disbursing officers of the Government, are advanced on warrants countersigned by the First Comptroller, who in that manner exercises a jurisdiction over them. (Bender's case, this vol., 346.)

The vouchers for disbursements made for the Army and Navy, pensions and Indian affairs are included in accounts rendered by the disbursing officers to the Second, Third, and Fourth Auditors, respectively, by whom they are referred to the Second Comptroller for his decision,

which is final; and as these do not come before the First Comptroller, he takes no cognizance of them, except in those cases where a balance has been found due a disbursing officer, and a warrant for payment has been issued.

Before countersigning such warrant the First Comptroller must ascertain that a balance is due, so that the payment would be "warranted by law."

But with these exceptions the decisions of the First Comptroller over the vast variety of questions presented to him are final and conclusive, with no authority to limit, control, modify, or defeat them, except only as Congress has an ultimate power to pay any demand rejected by any officer. (Bender's case, this vol., 331; *Id.*, 380; Delaware Steamboat case, 5 Ct. Cls., 55.) And payments sanctioned by the First Comptroller fix a right which no law can divest. (*Kaufman vs. U. S.*, 96 U. S., 567.)

In view of all this, the confident hope is indulged that the publication of a portion of the decisions of the First Comptroller may be found, in some respects, useful, to secure uniformity in the execution of the laws; to give information to those who are interested; and to induce on the part of the Comptroller himself that higher degree of care in making such decisions which may reasonably be supposed to result from the time and labor of preparation, and from a fuller submission of them to that portion of the learned and able officers of the Government who may have occasion to refer to them; and to a similar portion of that useful body of men, unsurpassed by any other in devotion to morality, law, and justice—THE LAWYERS OF THE UNITED STATES OF AMERICA.

DECISIONS OF THE FIRST COMPTROLLER OF THE
TREASURY.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

Copies of the decisions of the First Comptroller of the Treasury.

FEBRUARY 11, 1881.—Laid on the table and ordered to be printed.

TREASURY DEPARTMENT, *February* 10, 1881.

SIR: I have the honor to transmit herewith copies of the "Decisions of the First Comptroller" of this Department, referred to in the report of this officer, forwarded to Congress with my annual report for the last fiscal year.

Very respectfully,

JOHN SHERMAN, *Secretary.*

HON. SAMUEL J. RANDALL,

Speaker of the House of Representatives.

TREASURY DEPARTMENT,

First Comptroller's Office,

Washington, D. C., February 10, 1881.

SIR: In the annual report of the transactions of this office during the fiscal year ending June 30, 1880, which I had the honor to transmit to you on the 10th of November last, a reference was made to formal decisions in a considerable number of cases decided in this office.

I now have the honor to transmit herewith the decisions to which reference was then made; and others since made, up to the 1st of January. To these there is added an appendix, containing some of the

laws relating to the duties of this office, with statements somewhat in detail of business transacted in this office and the offices of the several Auditors, Commissioner of the General Land Office, and the Commissioner of Customs, so far as they relate to the payment of claims; and other matter believed to be of sufficient importance to justify publication.

Very respectfully,

WILLIAM LAWRENCE, *Comptroller.*

Hon. JOHN SHERMAN,
Secretary of the Treasury.

TREASURY DEPARTMENT, UNITED STATES.

Before WILLIAM LAWRENCE, *First Comptroller in the Department of the Treasury of the United States of America.*

AUGUST 4, 1880.

WILLIAM P. WOOD'S CLAIM—WOOD'S CASE.

1. Ordinary *annual* appropriations can only be applied in paying for official or *quasi* official services rendered in the fiscal year for which they are made. The claim therefor may be subsequently audited and allowed, and may be paid out of such appropriation at any time before an unexpended balance is carried to the surplus fund. (Rev. Stats., 3690, act March 3, 1875; 18 Stats., 418.)
2. Under *such* appropriations there is no authority to make contracts for such services to be rendered beyond the fiscal year. (Rev. Stats., 3679, 3732, 3733, 5503.)
3. If such unauthorized continuous contract be made, services rendered *each year* may be paid from the appropriation for *that year*. The payment is a ratification *pro tanto*.
4. If payment for *such*, or *any*, services under an *annual* appropriation act be not made until any unexpended balance is carried to the surplus fund, as required by act of June 20, 1874, (18 Stats., 110,) no remedy for the claimant can be afforded by the accounting officers of the Treasury Department but to audit and report the claim to Congress, as required by act of June 14, 1878, (20 Stats., 130,) except in certain cases as to accounts of disbursing officers. (Act March 3, 1875, 18 Stats., 418, sec. 5.)
5. Claims can only be so reported to Congress when there had been an appropriation applicable to such claim, the balance of which has been exhausted or carried to the surplus fund. (Act June 14, 1878, Rev. Stats., 3679.)
6. The claims which can be so reported are those which are legally valid, and not those arising solely *ex æquo et bono*.
7. Under the act of June 20, 1874, (18 Stats., 110,) authorized contracts existing at that date are to be fulfilled from appropriations previously made, and unexpended balances shall not be carried to the surplus fund so as to prevent such fulfilment. If they have been so carried, they may be transferred to fulfil contracts. (Act March 3, 1875, 18 Stats., 418.)
8. The term "contracts" as used in the act of June 20, 1874, only includes those in the course of execution unfulfilled, and not contracts accrued into liabilities.
9. The rule of the common law that an officer charged with the duty of detecting felons cannot make a valid contract, for a reward or compensation, beyond his legal fees, is not necessarily applicable to authorized contracts made by officers

of the Government in the absence of a restraining statute, or to those which do not fall within the terms of section 1765 of the Revised Statutes.

10. There is a distinction between permanent *specific appropriations* and *annual appropriations*. Specific appropriations which are designed to be permanent cannot be carried to the surplus fund until the purpose of the appropriation is accomplished.
11. Contracts under these may be continuous, and claims adjudicated and paid while the appropriation is unexpended and unapplied.
12. The "Secret-Service Division" of the Treasury Department was never organized by law, but was lawfully organized under executive authority by force of annual appropriations to execute its purposes.
13. The employés of the Secret-Service Division are not technically *officers* for all purposes.
14. Under the Revised Statutes, 191, and the act of June 14, 1878, a claim once *rejected* cannot be opened except by authority of the Secretary of the Treasury, and for sufficient reasons.

On the 22d day of January, 1880, the First Comptroller in the Department of the Treasury, by direction of the President, examined and made a report to him on a claim against the United States presented by William P. Wood, from which it appears that, "in 1867, the discovery was made that [7.30 United States] notes, amounting to about \$70,000, had been presented for redemption at the Treasury and paid," and which the Secretary of the Treasury, on consultation with said Wood, then Chief of the Secret-Service Division of the Treasury Department, subsequently suspected to be spurious.

The Secretary of the Treasury employed one Schlemm, a skilled detective of Philadelphia, not connected with the Government, for a reward offered of \$20,000, "to establish the spuriousness of the notes; * * * to get possession of the fraudulent plates and of all the spurious notes not already paid, and to deliver them to the Treasury Department; to find the persons who had issued the notes; to furnish evidence sufficient to insure their conviction; and also to assist the officers of the Government in collecting evidence which would enable it to recover the money paid for the fraudulent notes."

Mr. Wood applied to the Secretary of the Treasury to allow him a like reward, if he should be successful instead of Schlemm, and the Secretary "at least gave Mr. Wood to understand that, in case he should establish the spurious character of the notes, recover the fraudulent plates, and all the notes printed therefrom which had not been presented at the Treasury, be instrumental in procuring a return of the money which the Government had paid, and succeed in having the offender arrested and convicted, a like reward with that which he had offered to Schlemm, for like services, should be paid to him."

"The person by whom the fraudulent plate was made, and who printed the spurious notes, though arrested" through the agency of Mr. Wood, "was not convicted."

It is probable there was an understanding, perhaps implied, rather than expressed, that he should not be prosecuted, and without which the success attained by Wood could not have been achieved.

Wood procured the plates from which the spurious notes were printed, and the fraudulent seal, and delivered them to the Treasury Department. No spurious notes other than those redeemed have since appeared. No other fraudulent plates than those captured by Mr. Wood have been discovered. Suits were prosecuted in behalf of the Government for the recovery of the money paid at the Treasury for the spurious notes, in which the services of Wood were, perhaps, indispensable to success.

Wood claimed a reward of \$15,000 for the whole service which he had engaged to perform, and he was paid \$5,000 late in 1868 on account of, but not as satisfaction of, his entire claim.

"The assistance given by Wood to the district attorney in procuring evidence in the suit to recover the money paid for the fraudulent notes, was given after Wood had ceased to be chief of that division."

The same report also says:

"If the question of what ought to be allowed to Mr. Wood were *res integer*, and there were no question in relation to his right, while acting in the capacity of Chief of the Secret-Service Division, to receive for work properly belonging to that service, the extra compensation which this reward would give, my opinion would be that the sum of \$10,000 *ought* to be paid to him in addition to the \$5,000 which he had already received.

"If the question were one between private persons, one of whom had offered a reward in the manner in which it was offered by the Secretary, and the other of whom had performed such service as was rendered by Mr. Wood, it would not, by just persons, be regarded honorable to go in quest of nice distinctions to avoid payment for services so zealously and effectively rendered."

There is much more in the report which may be proper if not material to consider, but the result of it is, as I understand, that the First Comptroller was of opinion that Mr. Wood is *ex æquo et bono* entitled to a payment of \$10,000 from the Government for his services, but that it is not a claim valid by the strict rules of law. The report shows that on the 25th July, 1868, through the exertions of Wood, an appropriation of \$25,000 was made by Congress for detecting counterfeits and punishing counterfeiters, in addition to the usual annual appropriation for that purpose, and with a view that the whole or a part of it should be applied to pay him for said services.

On the 4th of February, 1880, in answer to an inquiry from the President, whether he had authority to direct payment of the \$10,000, which ought to be paid to Wood, the then First Comptroller reported to the President—

“1. The appropriations out of which Mr. Wood might have been paid, even if not exhausted in the year for which they were made, have long since been covered into the Treasury. If the claim were now legally established it could not be paid without first being reported to Congress and an appropriation being made for its payment.

“2. To establish the claim in such manner as to allow it to be presented by the Secretary of the Treasury to Congress, under the provisions of section 4 of the deficiency act of June 14, 1878, it would first have to be approved by the Secretary, then submitted for settlement to the First Auditor, then certified for examination by him to the First Comptroller and approved by him.

“3. It is not likely, I suspect, that the Secretary of the Treasury would approve the claim, as it has been twice rejected by him.

“4. I have always had doubt whether the promise made by Mr. McCulloch [Secretary of the Treasury] to Mr. Wood was such a one as could be enforced at law. When it was made, Mr. Wood was Chief of the Secret-Service Division, receiving a stated salary, previously fixed by the Secretary, for his services. That salary could probably have been increased, at the discretion of the Secretary of the Treasury, but it is very doubtful whether the Secretary, the salary not having been increased, could engage to pay an additional sum for a specific service. Section 1765 of the Revised Statutes is applicable to the question.”

It does not distinctly appear from the report when the services of Mr. Wood commenced or terminated. His services were actively rendered in 1867 and 1868, and, in a letter to the Solicitor of the Treasury, of December 22, 1870, Mr. Wood refers to a claim for reimbursement for expenses for attending suits in New York to recover the money paid for the spurious notes, and says: “On a former occasion I incorporated a claim for payment *per diem* during the time necessarily expended in the business,” and on the 23d of December, 1870, his *per diem* was paid by the Treasury Department, so that his services under the arrangement made in 1867, would seem at least to have terminated as early as December, 1870.

On the 20th of July, 1880, the President requested the now First Comptroller to “make a final disposition of the case.”

Hon. T. W. Bartley, for Mr. Wood, before the First Comptroller, argued:

I. The claim having been adjudicated January 22, 1880, by the First Comptroller, can be paid out of the appropriation for the Secret Service for 1880. The adjudication was during the fiscal year 1880, and

makes a liability, fixed and accruing therein. The contract was continuous, and could not mature until adjudicated.

The practice of this Department in disbursing funds appropriated for detecting counterfeiting has been to pay such sums as may be found due at the time of the adjudication.

Detectives Dickson, Reynolds, Perkins, and Reed (two of whom were in the Secret-Service Division) were paid a reward for the arrest of Thomas Ballard, offered in 1871. The capture was made some years after. The award was paid from the detective fund of 1875.

II.—The payment is authorized by act June 20, 1874, sec. 5, (18 Stats., 111,) which was not repealed by act June 14, 1878. (20 Stats., 130.)

III.—The act of June 14, 1878, requires payment. It has been decided that an appropriation for a continuous contract may be applied to the same service during a subsequent year, and does not lapse into the surplus fund. (Brightly's Dig. Laws U. S., 43, note *a*, 7 Op., 1-14.)

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OPINION BY WM. LAWRENCE, *First Comptroller*:

The services of Mr. Wood were rendered to the Government commencing in 1867, and ending prior to the fiscal year 1880.

I.—If it be admitted that his claim for compensation was duly audited and allowed (as it was not) in the fiscal year 1880, with an allowance of \$10,000, it cannot be paid out of any appropriation for that year. The only appropriation applicable is that made by act of March 3, 1879, "making appropriations for sundry civil expenses *for the fiscal year ending June 30, 1880,*" including an appropriation for "expenses of detecting and bringing to trial persons engaged in counterfeiting." (20 Stats., 384.)

The act, by its title, shows that it was designed to pay for services *rendered during that year*, and the uniform usage has been to regard appropriations for ordinary purposes for a designated fiscal year as applicable to services for that year. (Rev. Stats., 3679, 3680.)

It is true, an act making *annual appropriations* may make a *permanent "specific appropriation"* for an object continuous in its nature, and, until expended, a claim may be paid out of it without regard to the year in which it accrued or is audited and allowed. Thus, an appropriation for the construction of a ship under a continuous contract, would be a permanent specific appropriation, and, until its object be accomplished, no unexpended balance could be carried to the surplus fund. (Act June 20, 1874, sec. 5, 18 Stats., 110; act March 3, 1875, sec. 5, 18 Stats., 418

Rev. Stats., 3679, 3732, 3733, 5503; 4 Op. Attorney-General, 600; 7 Op., 1-14; 9 Op., 18; Op. April 27, 1876; Rev. Stats., 3618, 3688, 3690, 3691, 3692.)

A permanent *specific* appropriation is very different from an *annual* appropriation.

Under an annual appropriation, like that of March 3, 1879, for ordinary expenses, the right to compensation depends on the *time of service*, and not on the date of the allowance, which latter may be made so as to secure payment at any time within the two fiscal years mentioned in the 5th section of the act of June 20, 1874, at the end of which, unexpended balances of appropriations must be covered into the Treasury.

The practice of the Department, in disbursing funds appropriated for detecting counterfeiting, has not been to pay for services rendered in a given year, out of an appropriation for a subsequent year, upon an allowance in the latter year.

A reward was paid to Perkins, Dickson, Reynolds, Henderson, and Reed, in August, 1875, from the appropriation for the fiscal year ending June 30, 1875, in consequence of the arrest of Ballard, effected by them, October 9, 1874, during the fiscal year 1875.

II.—No payment can be made by virtue of the act of June 20, 1874.

This act requires appropriations, unexpended for two fiscal years, to be carried to the surplus fund, except in five enumerated classes of cases, the last of which is provided for by declaring that "this section shall not operate to prevent the fulfilment of contracts existing at the date of the passage of the act" approved June 20, 1874. (Rev. Stats., 3688, 3691, 3692.)

This means that unexpended appropriations, for fulfilling contracts then *existing*, shall not be carried to the surplus fund, but shall remain to fulfil such contracts.

This provision only applies (1) when there *is*, or has been, an unexpended appropriation, (act June 20, 1874, 18 Stats, 110; act March 3, 1875, 18 Stats., 418, sec. 5;) and (2) as I am required to hold, by reason of prior decisions, in cases of *existing contracts* in the course of execution, and not contracts matured into liabilities. There must be an unexpended appropriation, because the act of 1878, in terms, so requires, and contracts in excess of appropriations are prohibited. (Rev. Stats., 3679.)

This was decided by the First Comptroller, July 15, 1874, who said that Congress, in using the word "contracts," "meant valid, *written* contracts existing, and in the *course of execution*, and unfulfilled June 20, 1874."

Whether it be correct to say it applies only to *written* contracts or not, it has been held only applicable to existing contracts in the course of execution.

The Secretary of the Treasury, in his decision of April 20, 1877, as to the payment of "accrued claims," approves this construction, and says:

"If the phrase 'existing contract' means a contract violated and ended long before, it would authorize the payment of the French spoliation claims, or claims growing out of contracts during the Mexican war, or the war of the rebellion. The act was passed expressly to protect the Treasury from old claims presented after the appropriation had terminated, and to correct alleged abuses by officers in paying accrued claims upon *ex parte* showing. The exception must not be so construed as to defeat the manifest purpose of the act. The contracts excepted are continuous and subsisting contracts, requiring acts to be performed, and not contracts broken and ended, or matured into accrued liabilities."

The claim now made cannot be paid even if regularly allowed, because it was matured prior to June 20, 1874. But if it had matured even later, it cannot be paid for reasons which appear herein. There is an insuperable difficulty in the way of now paying this claim, as determined by my predecessor, in the fact that the appropriations applicable to it, "even if not exhausted in the years for which they were made, have long since been covered into the Treasury."

In *Stansbury vs. U. S.*, 8 Wallace, 36, it was said, in a similar case, "the Secretary could not pay the claim because there was no appropriation to pay it."

III.—The act of June 14, 1878, (20 Stats., 130,) as applied to this claim.

The 4th section of this act declares that "It shall be the duty of the several accounting officers of the Treasury to continue to receive, examine, and consider the justice and validity of all claims under appropriations, the balances of which have been exhausted or carried to the surplus fund under the provisions of said section, [sec. 5, act June 20, 1874,] that may be brought before them within a period of five years. And the Secretary of the Treasury shall report the amount due each claimant, at the commencement of each session, to the Speaker of the House of Representatives, who shall lay the same before Congress for consideration: *Provided*, That nothing in this act shall be construed to authorize the re-examination and payment of any claim or account which has been once examined and rejected, unless reopened in accordance with existing law." (See R. S., 191, 236, 269, 270.)

I have not been asked, as my predecessor was, to examine this claim *de novo*. I am not asked to decide what ought to be allowed, as if the question were *res integer*. There must, of necessity, be some end to

such examinations. I have been asked to "make a final disposition of the case"—the case as it is.

It is well settled, as a general rule at common law, that "the detection, arrest, and conviction of a felon, or the discovery and seizure, or return of stolen property, is a good consideration to sustain a promise made on such condition. * * * But a promise to pay public officers, on whom the law casts this duty, cannot be enforced at common law." (Gilmore *vs.* Lewis, 12 Ohio, 289; 2 Burr., 924; 15 Wend., 46; Cro. Jac., 103; 1 Caines, N. Y., 103; 2 Sandf., 318; 1 Hill, 362; 8 Wall., 33; Rev. Stats. U. S., 1765.)

In the absence of a prohibitory statute, it may be doubted if the Government is precluded, on grounds of public policy, from making such contract. (U. S. *vs.* Broadhead, 3 Law Rep., 95; U. S. *vs.* Duvall, 3 Gilp., 356.) In war and in peace great powers may be exercised, and rules applicable to citizens do not always impose barriers to defeat what is required for the common good.

The prohibition of such contracts generally, by section 1765 of the Revised Statutes, seems to recognize this view, or that section would have been unnecessary. It prohibits extra compensation to any officer or to any *person* whose salary, pay, or emoluments are "fixed by law or regulation." (21 How., 463; 7 Wall., 338; 8 Wall., 33; 9 How., 487; 2 Story, 202; 4 Cr. C. C., 203; 16 Pet., 291; Davies, 38; Dev. C. C., 34, 151; 5 Am. Law Reg., 268.) It is, perhaps, not certain that the pay of Mr. Wood was so "fixed," or that he was an *officer*. (Brown *vs.* U. S., 1 Curtis, 15; 2 Brock., 96; 3 Wall., 93; 6 Wall., 385; 4 Wall., 333; U. S. *vs.* Permaine, 99 U. S., 508.)

The Secret-Service Division is not technically and directly organized by express statute, but rests, as it may lawfully do, on the execution of Executive power, (Revised Statutes, 161,) based on annual appropriations for "detecting and bringing to trial persons engaged in counterfeiting," &c. (Act July 2, 1864.)

The Secretary of the Treasury may fix such pay or compensation as he deems proper, and increase it in his discretion, because the law prescribes no limit to his authority. I do not perceive any legal difficulty in the way of the Secretary agreeing to give increased compensation to Mr. Wood for extraordinary, or, indeed, for any services.

But, under the ordinary *annual* appropriations for detecting counterfeiting, the Secretary of the Treasury has no authority to make a contract like that alleged in this case specifically, to run through more than a current fiscal year. (Rev. Stats., secs. 3679, 3732, 3733, 5503.)

If such contract be made, services rendered under it may be paid

from the appropriation of each year for the service of that year. (*Stansbery vs. United States*, 8 Wallace, 36; Op. Attorney-General, April 27, 1876.)

But when the appropriation is expended or covered into the Treasury, as required by act of June 20, 1874, there is no means of paying a claim except as provided in the act of June 14, 1878. (Rev. Stats., 3691.)

Under that act, and by force of other provisions of law, as my predecessor has said, the claim "must first be approved by the Secretary of the Treasury, then submitted for settlement to the First Auditor, then certified for examination by him to the First Comptroller and approved by him." (Rev. Stats., 236, 269, 270; act of June 14, 1878, 20 Stats., 130.)

Claims *allowed* may be reconsidered by direction of the Secretary of the Treasury, under section 191 of the Revised Statutes.

The *usage* is, that when a claim is *rejected* by the First Comptroller, the Secretary of the Treasury may, by virtue of his general powers, require it to be reopened for consideration, upon new evidence or for other sufficient reasons.—Act of June 14, 1878. (1 Op., 598; 2 Op., 8 and 463; 3 Op., 46, 148, 461, 521, and 731; 4 Op., 79, Otis' case, and 378; vol. 5, pp. 125, 668–9; 6 Op., 576; 9 Op., 505, Heintzleman's case; 10 Op., 259; 12 Op., 358, 388; 14 Op., 275. Also Ops. June 15, 1877, and January 11, 1878. *Supreme Court*: 6 Wheat., 135; 9 Wheat., 651; 3 Pet., 12; 5 Pet., 292; 8 Pet., 375; 9 Pet., 319; 15 Pet., 400, Bank of Metropolis; 10 How., 109; 13 How., 478; *Clyde vs. U. S.*, 13 Wall., 38; *Police Force*, *post*, 70.)

When finally rejected, there is, as declared in the Revised Statutes, 191, no remedy except by action in the Court of Claims or by relief granted by Congress. And a claim rejected by Congress on its merits, will not, as a general rule, be considered by the accounting officers of the Treasury. (Op. Attorney-General, August 23, 1845.)

This claim has not been technically *adjudicated*, because it has not come through the channel indicated by my predecessor. (15 Op., 139.)

It is usual and proper in doubtful, difficult, and exceptional cases for the First Comptroller to examine claims on request of the President or Secretary of the Treasury, with a view to ascertain if they may be submitted to the proper Auditor and finally receive the sanction of the Comptroller. (But see 1 Op., 624, 678.)

There is no adjudication or allowance of this claim which either authorizes it to be paid or submitted to Congress.

Nothing can be now done with the claim, therefore, because—

1. The Secretary of the Treasury has not authorized it to be reopened.
2. His rejection of the claim, followed by the report of my predecessor

to the President, in effect that the claim is, in strict law, not valid, but resting only in conscience and moral obligation, precludes me from taking any action on it.

There remains to the claimant no remedy except an appeal to Congress, whose enlightened sense of justice, it is believed, will always reward valuable and meritorious services founded on principles of justice, although denied payment in the ordinary course by strict rules of law.

IN THE MATTER OF THE PAYMENT OF A TREASURY DRAFT—DRAFT CASE.

1. The legislative, executive, and judicial departments of the Government are, as to all powers exclusively conferred upon each, independent of each other. Hence a power exclusively vested in an executive officer can be executed by him only, and no other department or officer of the Government can interfere with, determine, or change the manner or result of its exercise.
2. The accounting officers of the Treasury Department are charged with the duty generally of ascertaining all sums due to creditors of the Government, and these may be paid by drafts drawn by the Treasurer on the Treasury or a depository. No court can interfere with or control the accounting officers in determining who are creditors, the amounts due, or to whom payable.
3. The statute requires the Treasurer, or the depository on which drafts are drawn, to pay the same to the payee or indorsee. Hence no court can, by any process or proceeding, require payment to be made to or for a creditor of the lawful holder of such draft, or otherwise interfere with the payment to such holder.
4. The decree of a court, appointing a receiver with power to indorse and collect such draft for the benefit of a judgment creditor of the holder thereof, is in contravention of the statute, and void.
5. It is competent for Congress to intrust to the judiciary the determination of questions affecting the rights of parties, except as to matters over which the Constitution has given executive officers exclusive authority.
6. The sovereignty of the United States and the authority of a State are distinct and independent of each other.
7. Hence the Government of the United States has the exclusive authority to pay its own creditors in such manner as it may determine; and no State court or other State authority can interfere with the manner of payment, or divert the payment from the payee designated by the laws of the United States.
8. A draft drawn by the Treasurer of the United States on a depository transfers no title to any specific money until paid. Hence such draft is not property in the sense that it is subject to the control of courts.
9. An executive officer, charged with the duty of ascertaining who are public creditors and the amounts due them, cannot delegate that duty to a court or other tribunal or person.
10. The duty of disbursing officers of the United States, prescribed by statute, to pay drafts to designated persons cannot be divested by any court, National or State.
11. How far courts may appoint receivers, or grant injunctions and prescribe duties, or determine rights, or control conduct of claimants, not affecting the adjudication or payment of claims or drafts by executive officers, it is not the province of executive officers to decide.
12. There may be transfers of drafts by operation of law.

On the 17th of August, 1878, the Treasurer of the United States issued and transmitted by mail to A. J. Johnson, Knoxville, Tenn., as

agent of B. P. Stacy, for money due him from the United States, a Treasury draft, as follows:

"Draft No. E 6179.

"On War Warrant No. 4668.

"TREASURY OF THE UNITED STATES,

"Washington, D. C., August 17, 1878.

"Pay to the order of B. P. Stacy two hundred dollars, registered August 17, 1878.

"G. W. SCOFIELD,

"Register of the Treasury.

"A. U. WYMAN,

"Assistant Treasurer of the United States.

"To TREASURER U. S., Washington, D. C.

"\$200."

C. W. Hall had a judgment against Stacy, in order to secure payment of which he instituted a proceeding in the chancery court for the Knoxville district, making Stacy and his agent (Johnson) parties defendant, in which the latter was garnisheed, the draft attached, and brought into court; and the record shows that on February 1, 1879, it was by the court adjudged that said "A. J. Johnson be appointed receiver in this case, who accepts the same, * * * that the title of said B. P. Stacy to said draft * * * be divested * * * and be vested in said A. J. Johnson, as receiver, who is fully authorized to collect the same * * * and to indorse said draft," to pay the judgment and costs, and bring the residue into court.

The draft was indorsed "B. P. Stacy, by A. J. Johnson, receiver," accompanied by sufficient evidence of the regularity of the proceeding in court. The decree did not require Stacy to indorse the draft. The question now presented is, whether the Government shall pay the draft to the receiver or to the payee therein named.

C. W. Hall, of Tennessee, and *Ross & Dean*, of Washington, representing parties interested in maintaining the jurisdiction of the court, submitted arguments.

Hon. *Samuel Shellabarger*, of Ohio, and Hon. *Jer. M. Wilson*, of Indiana, representing parties denying the jurisdiction of the court, submitted arguments.

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OPINION BY WILLIAM LAWRENCE, *First Comptroller of the Treasury*:

Efforts have been made in several forms of judicial proceedings, on behalf of creditors, to secure payment of their dues from money payable to their debtors by the Government. The seizure of drafts by process of attachment, mandamus against officers, the appointment of receivers,

and creditors' bills with injunctions against Government officers, injunctions against persons having claims from receiving them until the equitable rights of parties claiming a portion are determined, with a receiver to collect the fund for distribution, and bills to enforce liens of attorneys for services, are among the forms of remedy seeking this object. The courts, both National and State, have alike exercised jurisdiction for this purpose, in some instances in advance of the issue of a draft and while a claim was pending to be audited. Very many of the creditors of the Government are paid by *drafts*, and it becomes a matter of the utmost importance that these questions should be settled. (Rev. Stats., 306, 307, 308, 3593, 3644, 3645, 3646, 3647, 4765, 5413, 5414, 5495, 5496.)

It is declared by statute that "all moneys paid into the Treasury shall be subject to the *draft* of the Treasurer, and, for the purpose of payments on the public account, the Treasurer is authorized to draw upon any of the depositaries."

These drafts are for convenience, and, as the term imports, payable to order.

No court, National or State, can intervene between the Government and the payee or indorsee of a draft, to interfere with the payment thereof directly to such payee or indorsee. This must be so for several sufficient reasons:

I.—This necessarily results from the distribution of the powers of the Government by the Constitution, as the same are to be executed under existing statutes.

1. The Constitution divides power into legislative, executive, and judicial. That power which *exclusively* belongs to one department cannot be interfered with by any other.

Thus it is said in the case of Attorney-General *vs.* Brown, 1 Wisc., 522:

"Whatever power or duty is expressly given to or imposed upon the Executive Department is *altogether free* from the interference of the other branches of the Government. Especially is this the case where the subject is committed to the discretion of the chief executive officer, either by the Constitution or *laws*. So long as the power is *vested in him*, it is to be exercised by him, and *no other branch* of the Government can control its exercise." (State *vs.* Kennon, 7 Ohio State, 546; Davis *vs.* State, 7 Md., 161; Powell *vs.* Redfield, 4 Blatch. C. C., 45.)

This is cited, with approval by Cooley, in his valuable work on Constitutional Limitations, 115.

John Adams, in the preface to his defence of the American constitutions, says:

“Representations instead of collections of the people; *a total separation of the executive from the legislative power; and of the judicial from both*; and the *balance* in the legislature, by three *independent, equal branches*, are, perhaps, the only three discoveries in the constitution of a free government since the institution of Lycurgus.”

Calhoun, referring to these powers, says “each in the sphere of its powers is *equal and independent* of the others.” (1 Works, 197.)

This was affirmed in Jackson’s veto message. (2 Statesman’s Man., 772.)

Wm. Wirt, Attorney-General, said: “It is not in the power of the judicial branch of our Government to enjoin the executive from any duty specially devolved upon it by the legislative branch.” (1 Op., 681.)

This doctrine of equal, co-ordinate, separate, independent powers, is maintained by every reputable writer on the subject. (1 Jefferson’s Works, 81; *Luther vs. Borden*, 7 How., 57; *State vs. Dorr*, 7 How., 1; Federalist, ch. 47–49; Chipman on Government, 44; 3 Hume’s Phil. Works, 39.)

The absolute independence of, and the right to the exercise of powers by, Congress, without interference by the judiciary, is so perfect that a court has no authority to summon a member of that body as a witness. To do so is a breach of its privileges, which it may punish as for contempt. The Speaker of the House, or a member, cannot be taken from his high duties, affecting the issues of war and peace, and the interests of all the people, to attend the sittings of a justice of the peace, or even of the highest court. The practice is for the court to present a request, and obtain permission of the House, that a member may appear as a witness. This results not from any positive provision of the Constitution, or of an act of Congress, but from the structure of the Government, the absolute right of each branch to discharge its duties unmolested, and the necessities of the case. The independence and authority of each branch of the Government is a subject I have studied with great care, and fully discussed during the time I was in Congress; and the record of debates will show, more at large than I can now present, the reasons and authorities relied on. (Congressional Record, vol. 3, pt. 1, 473–512, January 14, 15, 1875; also, vol. 4, pt. 3, p. 2490, April 15, 1876; also, vol. 4, pt. 4, p. 3829, June 15, 1876; *Anderson vs. Dunn*, 6 Wheat., 204; *Ex parte Kearney*, 7 Wheat., 44; 3 Wilson, 188; May’s Parl. Prac., 77; 14 Gray, 226.)

I am not discussing the duty of executive officers to accept the con-

struction of the Constitution or statutes made by courts, but only their right to determine those facts intrusted to their exclusive consideration, and to do those acts authorized and commanded by law.

The statute imposes on the accounting officers of the Treasury Department the duty of ascertaining to whom moneys are due, and makes it the duty of the Treasurer by draft to pay **THAT PERSON, or his indorsee.** (Rev. Stats., 236, 268, 276, &c.)

The courts cannot divert the application of the money from *the person* designated by statute to receive it, or decide who that person is. The statute law says the draft shall be payable to the order of the payee; the court cannot nullify rights fixed by act of Congress. The statute says the payee shall have the money; the court cannot say he shall not. The court is subordinate to the law, not above the law. The Constitution declares that "no money shall be drawn from the Treasury but in consequence of appropriations made by law." Appropriations are made to pay parties entitled to payment. The appropriation acts, in effect, say payments shall be *to the claimants*. The money appropriated in satisfaction of this claim is to be applied in pursuance of law—not of the decree of a court.

2. Illustrations of the application of *this principle* of the distribution of the powers of Government are numerous. It is by virtue of this that an *officer* of the Government, or of a State, or of a county, is not liable to *garnishee process*, to *process of attachment*, *trustee process*, to be made a party to a *creditor's bill*, or to be *enjoined* from paying money in his hands, with a view to divert it from the payee designated by law in favor of a creditor of such payee.

As to attachment: This is shown by that learned, able, and valuable work, Drake on Attachment, 493; Chealey *vs.* Brewer, 7 Mass., 259; Balkley *vs.* Eckert, 3 Pa. State, 368; Devine *vs.* Harvey, 7 Monroe, 439; Spalding *vs.* Imley, 1 Root, 55; Buchanan *vs.* Alexander, 4 How., 20; Avarell *vs.* Tucker, 2 Cranch, C. C., 554; McKeen *vs.* State, 4 English, 553; Hawthorn *vs.* St. Louis, 11 Mo., 59; Bradley *vs.* Richmond, 6 Vt., 121; Ward *vs.* Hartford, 12 Conn., 404; Brooks *vs.* Cook, 8 Mass., 246.

As to injunction: 1 Op. 681, Hilliard Injunc., 374; Freeman *vs.* Lewis, 4 My. & C., 254; Cooper *vs.* Alden, Harring, ch. 72; Mohawk, &c., *vs.* Archer, 6 Paige, 83; Greene *vs.* Mumford, 5 R. I., 475; McElrath *vs.* McIntosh, 11 Law Rep., 399; see Ridgway *vs.* Hays, 5 Cranch, C. C., 23.

As to receivers: High on Receivers, sec. 696; Vose *vs.* Reed, 1 Woods, 667.

The elementary books treat of the *classes of cases* in which receivers may be appointed, but do not enumerate money *in custodio legis* as one of them.

A receiver once appointed, cannot be sued unless by consent of the

court appointing him. (High on Receivers, sec. 254.) This shows by analogy that any jurisdiction once acquired, as between independent branches of the Government, cannot be interrupted until its consummation by any merely co-ordinate authority. And if process of attachment cannot reach money in the custody of the law, on what principle can it be reached by a receiver ?

3. This power of executive officers to determine *amounts due* public creditors, to *whom* payable, and to *make payment to them*, is, by the terms of the statute, *exclusively* in these officers.

This is made certain by the provisions already referred to, and still more so by section 191 of the Revised Statutes, which makes their decision *final*, and declares it shall not be "subject to be changed or modified by the heads of Departments, but shall be *conclusive* upon the executive branch of the Government, and be subject to revision only by Congress, or the proper courts."

In general terms, it may be said the *only* jurisdiction given to any court, which can affect the decision of the First Comptroller, is that conferred on the Court of Claims, in which a claimant whose claim is rejected, or right to payment denied, may, in *specified* cases, sue the United States, (Rev. Stats., 1059,) and to this court the heads of Departments may refer certain claims. (Rev. Stats., 1063.)

The fact that *this* jurisdiction is given, carries with it an implication that it is the *only* authority which any court can exercise, and that without it the decision of executive officers would be final and conclusive, beyond the reach of any power except that of Congress—*expressio unius, exclusio alterius*.

Even as between different *branches* of the *same Department*, powers conferred exclusively on one branch are independent of all others, and cannot be interfered with by them.

Thus the authority of the First Comptroller has been deemed so *exclusive*, conclusive, and final, that my predecessors in office have uniformly maintained that the law invoked *their* judgment only in the discharge of the duties intrusted to them.

Mr. *Tayler*, First Comptroller, in his opinion of December 5, 1872, as to the effect of the "eight-hour law," (acts June 25, 1868, and May 18, 1872,) and on which he *differed* with the opinion of the Acting Attorney-General, of October 24, 1872, said :

"I am at all times willing to treat an opinion of the Attorney-General *with great respect*, and to allow it such weight as it may justly be entitled to. * * * The power to act and to decide * * * was *conferred upon the Comptrollers*, and no authority was given to any other Depart-

ment or officer to interpose between them and the execution of the law, according to *their* best judgment of its import."

This he reaffirmed December 19, 1872, and I am not aware that the correctness of his position is doubted.

The statute requires the First Comptroller "to countersign all warrants drawn by the Secretary of the Treasury which shall be *warranted by law*." (Rev. Stats., secs. 246, 247, 248, 254, 269, 273, 3673, 3674, 3675.)

This includes *every* warrant by which money for all purposes is drawn from the Treasury; and as to *all* these the First Comptroller is to decide if they are "warranted by law."

No court can determine to *whom* any payment shall be made, nor can any other officer interfere with this ultimate and absolute power to decide. There are many payments to be made of salaries, and under acts of Congress naming the payees, and judgments of the Court of Claims, and rarely other exceptional cases, in which no question is to be decided but the identification of the parties entitled to payment.

3. Undoubtedly there are many remedies which the law-making power *can* authorize the courts to afford, thus making executive officers, in some sense, subject to judicial control, so far as to execute the judgments of courts.

Thus it is said:

"Such powers as are specially *conferred by the Constitution* upon any specified officer, the legislature cannot confer upon any other officer or authority; and from those duties which the *Constitution* requires of him he cannot be excused by law." (Haley *vs.* Clarke, 26 Ala., 439; People *vs.* Bircham, 12 Cal., 50; Morgan *vs.* Buffington, 21 Mo., 549; State *vs.* Dunning, 9 Ind., 22.)

"But *other powers* or duties the executive cannot exercise or assume except by *legislative authority*, and the power which, in its discretion, it confers it may also withhold or confer in *other directions*." (Cooley, Const. Lim., 115; Field *vs.* People, 2 Scam., 80.)

It is by virtue of this *principle* that the *legislative* power may subject executive officers in the payment of Government dues to such judicial control as will apply payments to meet the demands of justice between citizens. This is a question of expediency for the legislature. Hence, in some States, county officers having money *in custodio legis* are, by statute, made amenable to process of garnishment, and other remedies of creditors.

The fact that a *statute* has always been deemed requisite to give jurisdiction is evidence that, without it, executive officers are, under statutes charging them with administrative duties, the sole judges of the mode of exercising them, and in the performance of which to completion there can be no judicial interference.

No act of Congress has subjected the First Comptroller to any judicial control, except as already indicated.

If the decree in Tennessee can transfer the legal title to the draft in question, it will accomplish all the purpose of an attachment or garnishee process directly against a Government officer. It will thus invade the statutory authority and duty of Executive officers. It will do *indirectly*, and without giving the officer a "day in court," what the policy of the law says cannot be done when the officer can be heard in court. A court can no more decree that the payee of a draft be deprived of the money due thereon than it can decree the taking from a party of the money directly appropriated to him by an act of Congress. In both cases the law directs to whom payment shall be made.

Judicial power, like executive, exists by the Constitution, or is conferred by statute, or sometimes arises from the nature and creation of the courts.

The *principles* stated deny to National courts the authority to interfere with the payment of Government dues.

4. But *State* courts, for even more cogent reasons, cannot, by any exercise of authority, interfere between executive officers and Government creditors in the payment of public dues. (*Carr vs. U. S.*, 98 U. S., 437.)

The sovereignty of the United States and the authority of a State, as the Supreme Court has said, "are distinct and independent of each other within their respective spheres of action." (*Ableman vs. Booth*, 21 How., 515; *Norris vs. Newton*, 5 McLean, 92; *Spangler's case*, 11 Mich., 298; *In re Hopson*, 40 Barb., 34.)

The right of the National Government to pay its own creditors in its own way is absolutely certain. "No *State* can authorize *its* courts to exercise judicial power" over subjects within the exclusive jurisdiction and control of the Supreme Government. "The sphere of action appropriated to the United States is beyond the reach of the judicial process of a State court." (21 How., 516.)

From the nature of the dual governments of our system, the *imperium in imperio*, it is clear that a State cannot interfere with the "means and instruments employed in the exercise of the functions of the" National Government. (*Cooley*, Const. Lim., 18, 482; *Case of Electoral College*, 1 Hughes, 571; *Van Allen vs. Assessors*, 3 Wallace, 585; *McCulloch vs. Maryland*, 4 Wheat., 316, 427; *Weston vs. Charleston*, 2 Pet., 449; 1 Wheat., 334; 4 Wall., 411, 555; 1 West. Jurist, 241; 4 Wheat., 122, 209; 5 Wheat., 1, 51; *Doug.*, Mich., 207; 5 How., 410; 9 How., 560; 5 Leigh, 707; 14 How., 13; 4 Pet., 561; 9 Wheat., 738; 16

Pet., 435; 22 Ind., 279; 19 Wisc., 369; 15 Mich., 505; 3 Cold., [Tenn.,] 325.)

The draft in question is by its *terms*, and as the law authorizes, payable "to the order of B. P. Stacy."

Thus the *payee* is *designated by a law of Congress*. No State court can take from the payee his rights fixed by such law.

II.—(a.) Public policy forbids the exercise of the attempted jurisdiction of the courts. All judicial jurisdiction is derived from constitutions or laws, often very general in their terms, and the extent of the jurisdiction intended to be given is to be judged of by the structure of our dual systems of government, by public policy, and convenience. Nor is it to be supposed that these systems were intended to be so organized as that either, or any branch of either, could, without the consent of the other, prohibit or even embarrass its operations. Both systems exist on the maxim, *salus populi suprema lex*. If the National Government, in the payment of its creditors, is to be subordinated to the control of a State *judiciary*, it may be to State legislation, which is higher than the judiciary. If this were so, it would be impossible for the National Government to fulfil "the high trusts committed to it." (*Ableman vs. Booth*, 21 How., 515.)

State courts, or State laws, might intervene to divert from soldiers their pensions;* from mail-carriers, contractors on public buildings and public works, contractors furnishing supplies to the Departments and for the Army and Navy in war and in peace, their pay, without which contracts could not be fulfilled; from officers at home and abroad their salaries, without which public duties could not be performed; Government bonds might be appropriated, and hence their value impaired.

The Government would be involved in considering the extent, character, and effect of the jurisdictions in all the States; in determining whether jurisdiction of the person of rival claimants to drafts had been obtained; whether the seizure of drafts without personal service could transfer title; the effect of conflicting jurisdictions in each State, between States and between National and State courts, all claiming to seize and appropriate drafts, or even Government bonds.

States might legislate to limit acquisitions of property in Government securities, and in various ways impede the operations of the National Government. The National Government can never surrender its right to pay pensions directly to soldiers, and, if need be, to exempt them from any other appropriation under State authority. Any interference

* Section 4747 of the Revised Statutes is declaratory of what the law was even without it.

by courts would be embarrassing. (*Buchanan vs. Alexander*, 4 How., 20.)

These objections to interference on the part of the courts apply equally to National and State courts.

In the construction of statutes and the separate powers of the Departments of Government, public policy and the *argumentum ab inconvenienti* are entitled to great weight.

(b.) Thus public policy is recognized and enforced by positive statute, which prohibits "all transfers and assignments made of any claim upon the United States, or of any part or share thereof." (Rev. Stats., 1291, 1430, 1576, 2106, 2263, 2414, 2436, 3039, 3040, 3477, 3480, 3963, 4037, 4536, 4643, 4745, 4898, 4955.)

And the policy of this statute has induced the Supreme Court to extend its operation by construction to the fullest extent. (*Spofford vs. Kirk*, 97 U. S. Rep., 484; Rep. First Comp., 1879, p. 7; *U. S. vs. Gillis*, 95 U. S., 407.)

The policy of the statute denies the right of courts by decree to transfer any demand against the Government.

III.—So far as the weight of opinion and authority is concerned, it is against the power of the courts to interfere. Some of the authorities have been presented; others may be added. (Opinion Attorney-General, July 11, 1879; 1 Op., 681–684; 3 Op., 533, 667, 718; 6 Op., 226; 7 Op., 80; 11 Op., 118; *Buchanan vs. Alexander*, 4 How., 20; *Brooks vs. Cook*, 8 Mass., 246; *Wallace vs. Lawyer*, 54 Ind., 501; *Jenks vs. Osceola Tp.*, 45 Iowa, 554; *Spencer vs. School Dist.*, 11 R. I., 537; *Keyser vs. Rice*, 47 Md., 203; 4 How., 20; 2 Cranch, C. C., 544; 3 Pet., 292.) This subject is also fully discussed in *Sallu's case*, *post*, 214, and *Safford & Co.'s case*, *post*, 262.

An injunction as to public officers is only proper when they are proceeding *illegally*. (Hilliard on Injunctions, 374; High on Injunctions; *Frewen vs. Lewis*, 4 My. & C., 254; *Cooper vs. Alden*, Harring., ch. 72; *Mohawk, &c., vs. Archer*, 6 Paige, 83; *Greene vs. Mumford*, 5 R. I., 475.)

IV.—It has been urged that the courts having jurisdiction of persons, with a right to satisfy judgment creditors from assets of debtors, can, by decree, *pass the legal title to a draft*. It has already been shown that this cannot be done. If it could be, every purpose of the National Government, as already shown, might be defeated. It has been determined that—

"So long as money remains in the hands of a disbursing officer it is as much the *money of the United States* as if it had not been drawn from the Treasury." (*Buchanan vs. Alexander*, 4 How., 20.) "Until paid over * * * to the person entitled to it, the fund cannot, in any

legal sense, be considered a part of his effects.” (Owen *vs.* Miller, 10 Ohio State, 144.)

A draft is not *per se* property. It is only *evidence of a right* or an *authority* to draw money. It does not, as shown above, change the title to a mass of money, or any part of it applicable to its payment, until the money is delivered. (Story on Bills, sec. 419; Hansard *vs.* Robinson, 7 Barn. & Cres., 90; Morrison *vs.* Bailey, 5 Ohio State, 18.)

If a court, by decree, attempts to transfer the *authority* of the holder of a check to receive money, this is not enough without a *transfer* of *the duty* of the disbursing officer to pay, and courts cannot transfer the duties or powers of public officers. Officers cannot even do this themselves.

It was long ago decided that—

“The law requires that all claims * * * be settled at the Treasury Department. No officer of the Government, therefore, has a right to submit a claim to the decision of referees.” (Dig. Brodhead’s Decisions, sec. 153.)

This subject is discussed a little more fully hereafter.

V.—Applications have been made in some cases, asking the Treasury Department, either as a matter of right or as of comity, to permit the courts to adjudicate upon conflicting rights, or latent equities, of parties to a claim under consideration, to determine liens thereon, and to permit creditors to appropriate drafts in satisfaction of claims against the payees therein. (1 Op., 618; Op. Attorney-General, July 11, 1879.)

In Buchanan *vs.* Alexander, 4 How., 21, it is said, *obiter*, “cases may have arisen in which the Government, as a matter of policy or accommodation, may have aided a creditor,” but it is not said that this could be lawfully done *by submitting them to the determination of the courts*.

The Treasury Department cannot submit to any court the right to decide to whom money is payable, or to pass upon latent equities, or liens, or to decree that money due from the Government shall be paid to any one but the claimant.

Sufficient reasons have been stated. The *duty* of executive officers imposed by statute, to adjudicate claims and pay them to the claimant, cannot be delegated. Neither executive nor legislative power or duties can be alienated or transferred by the officers charged therewith. (Cooley, Const. Lim., 116; 15 Barb., 112–122; 8 N. Y., 483; 23 Barb., 349; 4 Harr., 479; 2 Iowa, 165; 5 Iowa, 491; 9 Iowa, 203; 3 Mich., 243; 1 Ohio State, 77; 6 Pa. State, 507; 11 Pa. State, 61; 4 Ind., 342; 11 Ind., 482; 26 Vt., 362; 17 Texas, 441; 3 R. I., 33.)

The adjustment of accounts of creditors of the United States, and

ir payment, is a matter within the *exclusive* authority of the Government. Such *exclusive* authority cannot be transferred to a State by an executive officer. A State cannot interfere with the exercise of such exclusive authority. (*Van Allen vs. Assessors*, 3 Wall., 585.)

It is well settled that "consent of parties cannot empower a court to act upon subjects which are not submitted to its judgment *by law*." (Cooley, Const. Lim., 398.)

And Cooley says, parties in court cannot, "by consent, empower any individual, other than the judge of the court to exercise *its* powers." (*Winchester vs. Ayres*, 4 Greene, [Iowa,] 104.)

It must be equally true that an executive officer cannot delegate the exercise of his authority to any court.

As to matters "over which Congress and the States may exercise a *concurrent* power, but from the exercise of which Congress, by reason of its paramount authority, may exclude the States, * * * Congress may withhold the exercise of that authority and leave the States free to act." (3 Wall., 585.)

But Treasury drafts are not the subject of *concurrent* power. (Cooley, Const. Lim., 18, 19; *Sturgis vs. Crowninshield*, 4 Wheat., 122; *McMillin vs. McNiel*, 4 Wheat., 209; *Houston vs. Moore*, 5 Wheat., 1-51; *Hanlan vs. People*, Doug., Mich., 207; *Fox vs. Ohio*, 5 How., 410; *U. S. vs. Marigold*, 9 How., 560; 5 Leigh, 707; *Moore vs. People*, 14 How., 13; *Providence Bank vs. Billings*, 4 Pet., 561; *Osborn vs. U. S. Bank*, 9 Wheat., 738; *Dobbins vs. Commissioners*, 16 Pet., 435.)

Congress, doubtless, might adopt State courts as National agencies, and give them the power to reach money payable by drafts, which power they might, but would not be bound to exercise, as in case of naturalization and of notaries public appointed under State authority; but this has never been done. (*Kentucky vs. Dennison*, 24 How., 107-109.)

VI.—The power of National courts is by no means denied as to matters which do not interfere with executive officers in the *adjudication* and *payment* of claims, or make them parties in cases in court. When money has passed from the Government, it and the holder are subject to the power of National and State courts. These may, perhaps, have the power, even before a draft issues, to take jurisdiction of and determine the equitable rights of parties *inter sese* to the claim on which it is or is to be founded, or possibly to the fund, when realized. How far courts may appoint receivers, or grant injunctions and prescribe duties, or determine rights or control conduct, as not affecting officers of the Government, and which do not affect the adjudication or payment of

claims or drafts by executive officers, it is not the province of executive officers to decide. (High on Receivers, sec. 696; *Vose vs. Reed*, 1 Woods, 647.)

If the application of money due a Government contractor is requisite to perform any duty to the Government, National courts may, perhaps, consider and protect parties, so that the duty will be fulfilled, or, if not, Congress can apply a remedy. These, at least, are not proper questions for the determination of officers of the Treasury Department.

It is not doubted that executive officers may, in furtherance of justice, or to save applications to Congress for relief, pay money at such time and place and on such notice to creditors or parties claiming equitable interests therein, or liens thereon, as will enable them to invoke a judicial determination of their rights. There are some forms of property, the title to which is subject to the operation of State laws, and as to which executive officers of the National Government accept the adjudication of State courts. Thus the right to land after entry may be determined, and patent issued to the rightful claimant.

Tangible chattels are generally subject to adjudication by local courts, whose adjudications would often determine the rights of parties claiming under the United States. (*Owen vs. Miller*, 10 Ohio State, 142.)

But the right to the payment of Government bonds, principal or interest, is subject to the determination of executive officers of the Government. (Rev. Stats., 236, 3704.)

VII.—There may be transfers of the right to drafts and to receive money thereon by operation of law. (Rev. Stats., 5044; *Corwin vs. U. S.*, 7 Otto, 392; *Phelps vs. McDonald*, 9 Otto, 298; *Comegys vs. Vasse*, 1 Pet., 193; *Owen vs. Miller*, 10 Ohio State, 142.)

There can be no doubt that the title in a draft is transferred by devise, by intestacy and administration, by bankruptcy and the appointment of an assignee, by an assignment for the benefit of creditors with an indorsement of the draft in a similar mode, by operation of insolvent laws, by right of guardianship, in cases of lunacy by appointment of a committee, trustee, or guardian, &c.

So receivers of railroad corporations often succeed to all the corporate rights and duties of the ordinary officers, and, as such representatives, become entitled to pay for the performance of contracts for carrying mails, freights, &c.

I have been the more anxious to arrive at a correct conclusion, because, as to the draft in question, the decision now made is conclusive on all courts, and there is no power, except in Congress or by ref-

erence as authorized by section 1063 of the Revised Statutes, to pay any claimant, except the one now decided to be legally entitled.

After the most mature consideration, I cannot doubt the correctness of the general conclusions reached.

This whole subject has been considered with an earnest purpose to ascertain what the law is, because of its immense importance. Treasury drafts are daily issued in great numbers, and circulate all over this country, and in other nations. Officers and agents abroad are sometimes paid by these agencies. I am not unmindful of the high character and learning of the distinguished judges who have exercised jurisdiction demanding the payment of drafts to receivers.

The Treasurer is required to "render his accounts to the First Comptroller," who is to pass on them, and hence decide what are valid vouchers. (Rev. Stats., 305.) The Treasurer makes no payment on any doubtful voucher without the Comptroller's approval.

It is therefore ordered, That the draft in controversy be delivered to the payee therein named; that the Treasurer of the United States pay the amount thereof to him or his indorsee, and that the same, when so paid, be allowed in the settlement of the accounts of the Treasurer with the United States.

TREASURY DEPARTMENT,

First Comptroller's Office, August 11, 1880.

IN THE MATTER OF APPROPRIATIONS FOR THE NATIONAL ASYLUM FOR DISABLED VOLUNTEER SOLDIERS.—BUTLER'S CASE.

1. It has been decided by the First Comptroller of the Treasury that there is no law requiring the treasurer or assistant treasurer of the National Home for Disabled Volunteer Soldiers to give bond to the United States.
2. The regulations of the managers of the Home require a bond.
3. It has been decided by the First Comptroller that there is no "law making said treasurer or assistant treasurer an *officer* of the United States."
4. The act of June 23, 1874, (18 Stats., 216,) is applicable to said Home. Hence appropriations by Congress for its support should be placed to the credit of the proper fiscal officer thereof, on the books of the Treasurer of the United States, or an assistant treasurer or designated depository, to be paid out only on the checks of such fiscal officer as provided in said act.
5. Under the power to create such "officers as the managers may deem necessary," they may appoint a "fiscal officer" for each branch of the Home.
6. The act of June 23, 1874, (18 Stats., 216,) is applicable generally to asylums and similar institutions under the patronage of Congress.
7. It has been decided that unexpended balances of appropriations for the Home, remaining at the end of each fiscal year, should be covered into the Treasury.
8. The amount realized from sales by the Home are not to be covered into the Treasury as proceeds of Government property.

"The National Home for Disabled Volunteer Soldiers," was incorporated by act of March 21, 1866, (Rev. Stats., 4825,) to manage an institution whose support was to be derived from the stoppages adjudged against officers and soldiers of the volunteer army (during the rebellion) by sentence of court-martial or military commission, &c. The act provides that the business of the asylum shall be managed by a board of twelve managers, who shall select from their number a president, two vice-presidents, a secretary, &c. The board is composed of the President of the United States, the Secretary of War, the Chief Justice, and nine members, to be appointed by joint resolution of Congress, and they are authorized to make by-laws, rules, and regulations.

Section 6 provides that the officers of the asylum shall be a governor, a deputy governor, a secretary, and a treasurer, *and such other OFFICERS as the board shall deem necessary*, to be selected from disabled soldiers of the volunteer service.

The board established four different branches of the Home—one in Maine, one in Wisconsin, and one in Virginia, and appointed for each a deputy governor; and one branch at Dayton, Ohio, known as the "Central Branch," for which a governor was appointed. In the small branches the governor was made acting treasurer; in others, a treasurer was appointed for each. It became necessary that there should be some financial officer of the general management to control the funds, with power to adjust accounts of treasurers and acting treasurer of the branches. About twelve years ago, General B. F. Butler was appointed by the board president and acting treasurer, and as such he gave bonds in \$100,000, to the satisfaction of the board.

Under the act of June 16, 1880, substantially a new board was appointed.

On the 8th of July, 1880, the board elected General W. B. Franklin president, and he was appointed acting treasurer of the board. By another resolution of the board, General Butler, who had ceased to be a member, was asked to continue acting treasurer of the board until General Franklin should qualify as such by executing proper bond, so that, as disbursing officer, he might be able to receive the funds and settle the accounts with the acting treasurer. This continued General Butler as acting treasurer for the time being.

By the act of June 23, 1874, (18 Stats., 216,) it is provided:

"That all moneys hereafter appropriated for the aid, use, support, or benefit of any charitable, industrial, or other association, institution, or corporation, shall be placed to the credit of the proper fiscal officer of such association, institution, or corporation, by warrant of the Secretary of the Treasury, on the books of the Treasurer of the United States, or of an assistant treasurer or designated depository of the United States other than a national bank, and shall be paid out only on the checks of such fiscal officer, drawn payable to the order of the person to whom payment is to be made for services, materials, or any other purpose, and stating in writing thereon the specific object or purpose to which the avails thereof are to be applied: *Provided*, That when payments are to be made under twenty dollars, such fiscal officer may check in his own name, but shall state in writing on the check that the avails thereof are to be applied to the payment of small claims, and shall furnish to the Treasurer, assistant treasurer, or designated depository on whom the check is drawn, a certified list of such claims, which list shall set forth the amount and nature of each claim and the name of each claimant."

By the act of March 3, 1875, (18 Stats., 359, 360,) the Home is to be supported by annual appropriations, and the managers are required, on or before the 1st of August in each year, to furnish the Secretary of War estimates in detail for the support of the Home, and "money

shall be drawn from the Treasury for the use of said Home * * * upon quarterly requisitions, by the managers thereof, upon the Secretary of War;" and the managers are required to render to the Secretary of War an account, with vouchers of expenditures.

A requisition having been duly made by the officers of the Home on the Secretary of War, that officer, on the 17th of July, 1880, on an "Accountable Requisition, No. 9784," addressed to the Secretary of the Treasury, asked him "to cause a warrant for \$331,900 to be issued *in favor of Hon. B. F. Butler*, acting treasurer of the Board of Managers." This was duly signed by the Secretary of War, countersigned by the Second Comptroller, and registered by the Second Auditor.

It is now submitted to the First Comptroller, to determine how the warrant shall issue. (Rev. Stats., 269.)

On the 27th of November, 1876, the Second Auditor, by letter, asked the Secretary of the Treasury (1) if General Butler, then treasurer, should be required to file a bond [to the United States] before receiving an advance of money; and (2) if "the moneys advanced to him should be deposited in the Treasury," to be drawn therefrom in accordance with the act of June 23, 1874. (18 Stats., 216.)

It appears, from a memorandum on this letter, that it "was submitted to the First Comptroller, who decides that no bond was required, nor did the act contemplate the depositing of the money in the Treasury."

On the 3d of April, 1877, Hon. *R. W. Taylor*, then First Comptroller, addressed a letter to the Secretary of the Treasury, in which he said:

"I do not find any law requiring the treasurer or assistant treasurer of the Home to give bond to the United States, nor any law making said treasurer, or assistant treasurer, an officer of the United States. Hitherto, money has been paid by the Treasury to the person authorized by the Board of Managers to receive it. The managers of the Home are appointed by Congress, but cannot be called officers of the United States, nor can the treasurer appointed by them be regarded as such officer.

"By act of March 3, 1875, (18 Stats., 359, 360,) the managers, on estimates, make quarterly requisitions on the Secretary of War, on which estimates moneys are paid to the person named in the requisition, and payments so made are lawful. When the law directs moneys to be paid to particular persons, or in a specified manner, I do not understand that conditions can be prescribed not authorized by law, nor that payment in the way provided will be illegal."

He does *not in his letter allude to the act of June 23, 1874.* (18 Stats., 216.)

The act of March 3, 1875, (18 Stats., 360,) does not specify any "particular persons" to whom it "directs moneys to be paid," nor is there "any specified manner" of payment prescribed in the act. It does

provide that money shall be drawn "upon quarterly *requisitions by the managers* [of the Home] upon the Secretary of War."

While the *requisitions* are to be made by the managers—the only persons who could properly make them—it is *not* said that money shall be paid *to the managers*. If there could even be doubt about it, it is to be resolved in favor of giving full effect to the act of June 23, 1874. The act of 1875 does not profess, in terms, to repeal or modify the act of 1874, nor is there any repugnancy which requires me to hold that there is a modification by implication. It is well settled that repeals or modifications by implication are not favored. Both acts may stand and be operative. When the latter act provided for the support of the Home by appropriations from the Treasury, it became subject to the operation of the act of 1874.

The act of 1874 says, in direct terms, "that all moneys appropriated for the aid, use, support, or benefit of any charitable, industrial, or other association, institution, or corporation, shall be *placed to the credit of the proper fiscal officer of such corporation, &c.*, by warrant of the Secretary of the Treasury, on the books of the Treasurer of the United States, or an assistant treasurer, or designated depository," &c., and "shall be paid out only on the checks of such fiscal officer," &c.

Under the power to create such "other officers as the managers may deem necessary," they may appoint a "fiscal officer" for each branch of the Home, and make them subject to such supervision as the service may require.

I am very reluctant to change any usage of the Department, or construction heretofore given to laws. In cases where there can be such doubt as to the effect of statutes as to render different constructions admissible on approved principles of law, I would follow the usage which has prevailed. But I cannot doubt that the statutes require me to hold that the warrant on the accountable requisition before referred to should be such as to "place to the credit of the proper fiscal officer" of the Home the amount now to be applied for its benefit "on the books of the Treasurer of the United States, or of an assistant treasurer, or designated depository," as required by act of June 23, 1874.

In form the requisition and warrant should be made in "favor of an assistant treasurer or designated depository of the United States, to go to the credit of the proper fiscal officer of the National Home for Disabled Volunteer Soldiers." This construction cannot result in any inconvenience to the Home. General Butler, in a letter of July 30, 1880, to the First Comptroller, says:

"By an arrangement between myself and the Secretary of the Treas-

ury, prior to the act in the 18th Statutes, it was arranged that the acting treasurer of the Home had leave to deposit his funds in the sub-treasury at Boston, and to be paid out on checks drawn by him thereon, so that there is nothing in the way of that act.

“There has been no change made in the dealings between the Home and the Treasury Department.”

This noble institution is but a fulfilment, in part, of that measure of justice which the nation owes to its disabled volunteer soldiers, and the laws relating to it are entitled to a liberal construction to carry out its objects, and every facility which the law permits should be given by all connected with the Government to aid its operations.

The construction given to the acts of Congress to which reference is made, becomes somewhat important, because it applies generally to asylums and similar institutions under the patronage of Congress, and to the fiscal officers of such institutions.

This whole subject has been considered on conference with the Second Comptroller and the Deputy First and Second Comptrollers, and I am authorized to say that they concur in the foregoing opinion.

For the information of the officers of the Home and of the Treasury Department, it may be stated that in November, 1878, there were submitted to the Second Comptroller two questions touching the accounts of the Home, to wit:

1. “Are balances of appropriations remaining unexpended at the end of each fiscal year to be covered into the Treasury as provided by section 3690, Revised Statutes?”

2. “Ought the amount realized from sales by said Home to be covered into the Treasury as proceeds of Government property, as provided by section 3618, Revised Statutes?”

These he answered as follows:

“I deem it clear that such of said balances as have not been transmitted by requisition of the Secretary of War to the corporation mentioned in section 4825, remaining thus unexpended, should be covered into the Treasury, in pursuance of section 3690, Revised Statutes, and the 5th section of the act of June 20, 1874, (18 Stats., 110.)

“But as to such parts of the appropriations as have been regularly drawn from the Treasury and paid over to the said corporation in pursuance of the act of March 3, 1875, (18 Stats., 359,) the covering-in acts do not seem to apply.”

And he further says:

“To avoid all difficulty which might arise from an unnecessary amount of money becoming thus set apart, [for the Home,] Congress has, by the last-named act, [of March 3, 1875,] besides requiring the annual estimate made for the information of Congress, required the managers of

said Home to furnish to the Secretary of War quarterly estimates of the probable expense of each ensuing quarter, and 'an account of all their receipts and expenditures for the quarter immediately preceding. In this manner the Secretary of War is furnished with such *data* as to be able to determine, with reasonable certainty, whether at any time an unnecessary part of the appropriation has been placed in the keeping of the corporation, and to remedy any probable evil of this kind when issuing subsequent requisitions. This check upon the amounts to be intrusted to the administration of the corporation seems to have been designed by Congress as a substitute for the covering-in process which applies when the money is in the hands of disbursing agents having no corporate power, and no legal title to the money intrusted to them.

"I think there is no doubt the second interrogatory may be answered in the negative."

IN THE MATTER OF EMPLOYÉS IN GOVERNMENT PRINTING OFFICE.—HOLIDAY CASE.

1. In construing a statute in which there is ambiguity, the real intention of the law-making power, as gathered from recognized sources of interpretation and construction, must prevail, though contrary to the ordinary meaning of the mere letter of some parts of the act.
2. Rules of construction stated.
3. The joint resolution of Congress of April 16, 1880, giving pay to the employés of the Government Printing Office for legal holidays, including *July 4*, when employés of other Departments are so paid, was intended to give pay for *Monday, July 5*, it having, by usage in the Departments, been adopted as *the holiday* when *Sunday* happened to be the 4th of July.
4. It was the *holiday* rather than the *day* to which the gratuity was intended to be applied.

TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
Washington, D. C., August 2, 1880.

SIR: I have the honor to acknowledge the receipt of letters of the 28th and 31st ultimo, from John Larcombe, disbursing clerk for the Public Printer, in his absence, calling my attention to the joint resolution of April 16, 1880, providing for payment of wages to employés in the Government Printing Office for legal holidays, and inquiring if the employés of the Government Printing Office may be paid wages for the 5th of July as a holiday, the 4th having fallen on Sunday, and the office having been closed on the 5th as a holiday.

The joint resolution provides:

“That the employés of the Government Printing Office shall be allowed the following legal holidays with pay, to wit: the 1st day of January, the 22d day of February, the 4th day of July, the 25th day of December, and such day as may be designated by the President of the United States as a day of public fast or thanksgiving: *Provided*, That the said employés shall be paid for these holidays only when the employés of the other Government Departments shall be so paid: *And provided further*, That nothing herein contained shall authorize any additional payment to such employés as receive annual salaries.”

Your inquiry relates to pay for the 5th of July.

If we adhere to the *strict letter* of the resolution and apply it to the subject of your inquiries, it only declares the 4th day of July a legal holiday, and provides that certain employés of the Government Printing Office shall be paid for *this* holiday when the (like) employés of other

Government Departments shall be so paid. The employés of other Departments were not so paid for *that* day. The resolution does not *in terms* provide that in case the 4th day of July shall fall on Sunday another day may be substituted instead.

But there is a maxim applicable to the construction of statutes, *qui hæret in littera, hæret in cortice*. The mere letter must yield to the intention of the law-making power.

Sedgwick says "that in construing a statute, the judges have a right to decide in some cases even in direct contravention of its language," in order to give effect to the intention. (Sedgwick on Stat., 254, 2d ed.; 1 Ohio R., 480; 10 Ohio, 515; 15 Ohio, 341; 1 Ohio St., 543; 3 Ohio Stat., 85; 30 Vt., 746; 10 N. Y., 374; 5 Dutch., 96; 11 C., B. N. S., 244; 10 Minn., 107; 3 Laws, 398.)

Statutes are to be construed according to the intention of the makers, if this can be ascertained with reasonable certainty, although such construction may seem contrary to the ordinary meaning of the letter of the statute. (Silver *vs.* Ladd, 7 Wall., 219; Stamil *vs.* Ramond, 4 Cush., 314; Erwin *vs.* Moore, 15 Ga., 361; Bathurst *vs.* Course, 3 La. Ann., 260; Commercial Bank *vs.* Foster, 5 *Id.*, 516; Canal Co. *vs.* Railroad Co., 4 Gill & J., Md., 1; Ingraham *vs.* Speed, 30 Miss., 410; New Orleans, &c., R. R. Co. *vs.* Hemphill, 35 Miss., 17; Brown *vs.* Wright, 13 N. J., L., 1 Green, 240; State *vs.* Clarksville, &c., R. R. Co., 2 Sneed, Tenn., 88; Ryegate *vs.* Wardsboro', 30 Vt., 746; Jackson *vs.* Collins, 3 Cow., N. Y., 89; Riddick *vs.* Governor, 1 Mo., 147; Beal *vs.* Harwood, 2 Har. & J., Md., 167; Wilkinson *vs.* Leland, 2 Pet., 662; People *vs.* Utica Ins. Co., 15 Johns., N. Y., 358; Minor *vs.* Mechanics' Bank of Alexandria, 1 Pet., 64.)

In Brown *vs.* Somerville, 8 Md., 444, the Supreme Court of that State says:

"The words of an act may be disregarded when that is necessary to arrive at the intention of law-makers."

Construction can be carried to this extent only when there is real ambiguity and doubt. (4 Dal., 30.)

Statutes like that under consideration, which are designed to secure equality in privileges and exemptions among classes of Government employés, and especially for those engaged in productive labor, are entitled to a liberal construction, and to what is called the equity of the statute in their favor. (4 Dutch., 523; Story Eq., 754.)

In the construction of statutes, it is permitted to look outside of the statute to learn the previous state of the law, and the mischiefs which the statute was passed to obviate. (Sedgwick, 202.)

And where a statute is applicable only to a particular place, doubtful words may be construed with reference to the usage of that place. (*Love vs. Hinckley*, 1 Abb., Admr. R., 486; *Bailey vs. Rolfe*, 16 N. H., 247; Sedg., 216.)

There had been a usage in the Government Printing Office for many years, by which holidays were observed and the employés paid as if they had rendered service. And if a holiday fell on Sunday, the next day was observed and employés paid therefor. Thus, the 4th of July was on Sunday in 1869 and 1875, and the first of January was on Sunday in 1865, 1871, and 1876, but in each case the next day was observed and paid for. This usage was subsequently discontinued.

The other departments of the Government for many years observed, and continue to observe, the usage which had prevailed in the Government Printing Office. The discontinuance of the usage in the Government Printing Office left the employés therein less favored than those of other departments. The object of the statute was to place all on the same footing, and give like advantages to all rendering service in like manner. The joint resolution was aimed not so much at *any day* as the *holidays*, or days observed as such. The evident design was that no distinction should be made on account of the place of service. Without this construction, the equity of the resolution in some measure fails.

The employés in the Government Printing Office, who do not receive annual salaries, or salaries fixed upon the basis of an annual salary, are, therefore, entitled to pay for the holiday observed as for the 4th day of July, in the same manner as employés similarly situated in other departments.

I have the honor to be, respectfully,

WM. LAWRENCE,

First Comptroller.

Hon. JOHN D. DEFREES,

Public Printer, Washington, D. C.

STEPHANI'S CASE.

1. The Government is not liable to pay interest on judgments against revenue officers under section 985 of the Revised Statutes.
2. The same rule is applicable to judgments under section 3220.
3. A State statute cannot control an act of Congress regulating interest on judgments in the courts of the United States.
4. The Government is not included, unless in express terms or by necessary implication, in statutes allowing interest on judgments.
5. The Government only pays interest by force of a treaty, statute, or agreement, in pursuance of either.
6. The doctrine that interest is an incident of a judgment and passes by assignment of the judgment, has no application to the liability of the Government to pay interest by assuming the principal debt evidenced by judgment.

On the 3d of October, 1879, Gustav Woltman and others recovered a judgment against Charles Stephani in the circuit court of the United States, for the southern district of Illinois, for \$901 26.

The cause of action was, that Stephani, as collector of internal revenue, had illegally collected taxes from the plaintiffs. On the same day, on motion of the plaintiff, the court certified that "there was probable cause moving the said defendant for the acts done by him, whereon the said judgment was had and recovered against him; and that said acts were done by him in the performance of his official duty as collector of internal revenue of the twelfth collection district of Illinois, and under the direction of the Commissioner of Internal Revenue and the Secretary of the Treasury, in collecting certain assessments made for grain in excess of the surveyed capacity of his distillery, No. 1, in said district, during the months of October, 1872, and January, 1873."

On the 2d of January, 1880, the plaintiffs presented a certified copy of the judgment to the Commissioner of Internal Revenue, asking payment thereof, and it was duly referred to the Fifth Auditor, who stated an account, allowing to the claimants the amount of the judgment, costs, and interest on the amount of the judgment from the date of the certificate of probable cause to August 3, 1880.

The question is now presented to the First Comptroller whether interest shall be paid to the claimants.

DECISION BY WM. LAWRENCE, *First Comptroller*:

The practice heretofore in this office has been to allow interest on judgments from the date of the certificate of probable cause to the time

of filing the judgment in the Treasury Department for payment. It is always with reluctance that I change any ruling or practice. But it is very clear that the Government is not bound to pay interest, and the accounting officers cannot lawfully allow it. It is only by force of a *statute* that the Government can be required to pay. There is a statute applicable to this case, but it only provides that "the *amount so recovered* shall, upon final judgment, be * * * paid out of the proper appropriation from the Treasury." (Act March 3, 1863, 12 Stats., 741; Rev. Stats., 989; 12 Blatch., 407.)

The expression "the *amount so recovered*," as applied to the Government, includes only the sum of the judgment and costs.

It is true the statute declares that—

"Interest shall be allowed on all judgments in civil causes recovered in a circuit or district court." (Rev. Stats., 966.)

The statute of Illinois also gives interest on judgments.

But a *State* statute cannot regulate judgments of the courts of the United States. (*Ante*, 18; U. S. *vs.* Sherman, 98 U. S., 567.)

There are cases which support the view that the Government and a State are liable for interest *after demand and failure to pay*, even without an agreement to that effect. (Respub. *vs.* Mitchell, 2 Dallas, 101; Comm'rs *vs.* Kempshall, 26 Wend., 404; People *vs.* Canal Comm'rs, 5 Denio, 401; Thorndike *vs.* U. S., 2 Mason, C. C., 1; U. S. *vs.* Gurney, 4 Cranch, 345; 14 Op. Attorneys-General, 466.)

So cities, and especially by contract, are liable to pay. (Gelpeck *vs.* Dubuque, 1 Wall., 206; Aurora *vs.* West, 7 Wall., 105.)

But as to the Government and States, it is settled they are not liable for interest merely by force of a general interest statute.

And an act of Congress giving interest on judgments does not include the Government unless *expressly named* or so intended by clear inference. (Sedgwick on Stats., 84; act March 3, 1875, 18 Stats., 481; Des Moines *vs.* Harker, 34 Iowa, 84; 5 Op. Attorneys-Gen., 105, 138, 227, 397; 7 Op., 523; Gordon *vs.* U. S., 7 Wall., 188; 98 U. S., 565; Rev. Stats., 989, 1090, 3220; U. S. *vs.* Hewes, Crabbe, 307; State *vs.* Henderson, 40 Iowa, 245; Magee *vs.* Com., Pa. Stats., (10 Wright,) 359; 41 Iowa, 134; Gibbons *vs.* U. S., 8 Wall., 269.)

The *reason* of the rule is that the Government is always presumed to be ready to pay, that no *laches* are imputable to it. This doctrine is derived from the maxim that "the king can do no wrong." Interest is allowed because of wrongful neglect or refusal to pay, and it is in the nature of damages for a wrong.

The rule is founded on public policy. If the holder of a judgment

can obtain interest by delaying to present it for payment, he may subject the Government to unreasonable burdens.

This subject is fully discussed in "LAWRENCE'S LAW OF CLAIMS AGAINST GOVERNMENTS," (House Rep., 134, 2d Sess. 43d Cong.,) 218 to 241; 1 American Law Review, 657; House Rep., 391, 1st Sess. 43d Cong.; U. S. *vs.* McKee, 1 Otto, 442; letter of Secretary of the Treasury, Dec. 14, 1877; 1 House Ex. Doc. 27, 2d Sess. 45th Cong., p. 5; Rev. Stats., 989. For cases in which interest paid on Revolutionary claims, see Ex. Doc. No. 42, vol. 2, 2d Sess. 25th Cong.

The Government only pays interest, as a general rule, by force of statute, treaty, or contract in pursuance of either, as on Government bonds, &c.

The doctrine that interest is an *incident* of the *judgment*, and that the *incident* follows the *principle*, has no application to judgments against the Government, or judgments which the Government has by force of statute assumed to pay. The assignment of, or an agreement to assume, a judgment, carries with it the interest as an *incident*; but this principle has no application to the liability of the Government to pay interest on a judgment.

There are judgments on which, by statute, the Government pays interest. By sections 1089-1090 of the Revised Statutes, where an appeal is taken by the United States from a judgment of the Court of Claims to the Supreme Court, and final judgment is rendered against the United States, interest is allowed thereon at five per cent. per annum from the date of the presentation for the payment to the Secretary of the Treasury of a certified copy of the judgment. (See 18 Stats., 481.)

This provision was necessary, because at common law interest would not be paid.

The Revised Statutes, section 3220, provide that the Commissioner of Internal Revenue—

"Shall repay to any collector or deputy collector the full amount of such *sums* of money as may be *recovered* against him *in any court*, for any internal taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty."

The practice has been to allow interest on these judgments from the time of rendition until paid. This can no longer be permitted. The principles already stated exclude the authority of officers of the Treasury Department to pay interest.

In view of the principles stated, it is clear that a statute by which the Government assumes to pay a *judgment* is to be read by the rule of strict construction. Its language is not to be enlarged by construction. It is to be construed *strictissimi juris*. Being in derogation of common-law rules and of general public policy, a claimant takes only what the words of the statute give.

On a similar statute the Supreme Court, in *U. S. vs. Sherman*, 98 U. S., 567, say:

"The act of Congress says not a word about interest. The interest is no part of the amount recovered." (Coke Inst., 282 *b*, L. 3, 485; see Sedgwick on Stats., 267, 275, 290; 10 Minn., 386; 13 Minn., 326; 44 Miss., 323; 56 Barb., 54; 4 Mich., 322; 11 Texas, 234; 6 Hill, 382; 1 Seld., 383; 3 Denio, 220; 8 Md., 25; 1 Har. & J., 567; 13 Pick., 290; 20 Wend., 207; 20 J. R., 82.)

TREASURY DEPARTMENT,

First Comptroller's Office, August 14, 1880.

IN THE MATTER OF THE BOARD OF AUDIT CERTIFICATES OF THE DISTRICT OF COLUMBIA—AUDIT CASE.

1. Under the act of June 16, 1880, "for the settlement of all outstanding claims against the District of Columbia," &c., bonds are to be issued in redemption of the Board of Audit Certificates of the District of Columbia, the *interest* on which is to commence *at the date of said certificates*.
2. An act of Congress simply and *merely* making it the *duty* of the Secretary of the Treasury to pay specified liquidated demands on the Treasury does not always operate as an appropriation. Section 4 of the act of June 11, 1878, (20 Stats., 105,) does not operate *per se* to appropriate the money with which to make the payment, the right to which is therein established.
3. The question whether an act directing the Secretary of the Treasury to pay specified demands merely establishes a right or carries with it an appropriation, depends on the character of the act and other circumstances indicating the *intention* of Congress.
4. Appropriation acts are either (1) annual, (2) permanent annual, or (3) specific and continuous.
5. A special act directing the Secretary of the Treasury to pay a given sum to a person named operates as an appropriation of the money required for the purpose, and is specific and continuous.
6. Congress may by law give to any class of demands the *benefit* of existing appropriations without a specific appropriation act for the purpose.
7. Where there is an appropriation to pay interest on bonds described by the *name* by which they are usually known, and subsequently there is an increase thereof, subject to all the conditions of the former debt, the new bonds are entitled to the benefit of appropriations made to pay interest on bonds of such class.
8. Statutes relating to the public debt are to be literally construed, to preserve public faith and promote public credit.

TREASURY DEPARTMENT,

FIRST COMPTROLLER'S OFFICE.

Washington, D. C., August 15, 1880.

SIR: I have the honor to acknowledge the receipt of your letter of the 30th ult., asking for a construction of the act of Congress entitled "An act to provide for the settlement of all outstanding claims against the District of Columbia and confer jurisdiction upon the Court of Claims to hear the same, and for other purposes," approved June 16, 1880.

Section 9 of said act provides—

"That the Treasurer of the United States, as ex-officio sinking-fund commissioner of the District of Columbia, is hereby authorized and directed to redeem the outstanding certificates of the late board of audit, created by the act approved June 20, 1874, with the interest accrued on said certificates, by issuing and delivering to the owners or holders of such certificates, bonds of the District of Columbia, as provided in section seven of the act approved June 20, 1874, entitled "An act for the Government of the District of Columbia, and for other purposes," and acts amendatory thereof; said bonds to bear the same date, same rate of interest, and interest and principal be payable at same time, and subject to all the conditions, pledges of faith, and exemptions as the bonds authorized to be issued by the said seventh section of said act, and shall be signed by the said Treasurer as ex-officio sinking-fund commissioner of the District of Columbia, and numbered, countersigned, sealed, and registered as the said seventh section of said act prescribes, detaching all coupons from said bonds up to the date of such certificates."

Your letter asks my opinion upon the following points, viz:

"At what date the interest on the 3.65 bonds to be issued in redemption of the board of audit certificates in question shall commence, and whether under existing law there is any appropriation for the payment of interest upon the 3.65 bonds so issued."

It seems plain, from the language of the section quoted, that the interest is to commence at the date of the certificates which the bonds are issued to redeem.

Before I can answer the second question it will be necessary to consider some of the acts of Congress relative to the payment of interest on the 3.65 bonds of the District of Columbia.

The issue of bonds was provided for by the act of June 20, 1874, the seventh section of which, as amended by act of February 20, 1875, provides as follows:

"And the faith of the United States is hereby pledged that the United States will, by proper proportional appropriations, as contemplated by this act, and by causing to be levied upon the property within said District such taxes as will do so, provide the revenues necessary to pay

the interest on said bonds as the same may become due and payable, and create a sinking-fund for the payment of the principal thereof at maturity." (See U. S. Statutes, vol. 18, p. 332, *Id.*, 120, sec. 7.)

This act also provided that the interest of these bonds should be payable at the Treasury of the United States.

The next general provision relative to the payment of interest is found in the latter part of section 4 of the act of Congress providing a permanent form of government for the District of Columbia, approved June 11, 1878, where it is enacted that—

"Hereafter the Secretary of the Treasury shall pay the interest on the 3.65 bonds of the District of Columbia, issued in pursuance of the act of Congress, approved June 20, 1874, when the same shall become due and payable; and all amounts so paid shall be credited as a part of the appropriation for the year by the United States toward the expense of the District of Columbia, as hereinbefore provided."

The First Comptroller has decided that this clause in the act of June 11, 1878, did not make an appropriation for the payment of interest of the 3.65 bonds, and that the amount necessary to pay such interest should be included in the yearly estimates and appropriations made by Congress for the expenses of the District under the provisions of section 3 of the same act.

The Secretary of the Treasury, in a letter of May 15, 1880, gives the reasons for this view, as follows:

"Although the language of the fourth section of the act of June 11, 1878, conveys the impression of a permanent appropriation for the payment of interest on these bonds, when considered in connection with the third section of the same act, and the two appropriations subsequently provided by Congress, both of which included the sum necessary to pay such interest, it seems to direct how interest shall be paid, rather than to contain an appropriation for its payment.

"Furthermore, as Congress expressly stipulates that the sinking-fund and interest on these bonds shall be paid out of the proportional sum which the United States may contribute toward the expenses of the District of Columbia, and as the amount thereof must be considered in arriving at the proportional amount to be so contributed, it would seem conclusive that the payment of interest and sinking-fund on the funded debt of the District of Columbia is wholly dependent upon an annual appropriation by Congress."

The appropriations for interest for 1880 and prior years have been exhausted, and consequently there is no money available for the payment of interest on the bonds to be issued, unless it can be paid out of the appropriation for the current fiscal year.

The estimates of the Commissioners of the District of Columbia, as approved by the Secretary of the Treasury, in accordance with the provisions of section 3 of the act of June 11, 1878, (20 Stats., 103,) for the

fiscal year ending June 30, 1881, contained an item "for interest and sinking-fund on the funded debt of the District, exclusive of water bonds, \$1,155,583 55."

This estimate was based upon the amount of the funded debt of the District at the date, when it was submitted, December, 1879, and was only for the sum necessary for interest and sinking-fund for the fiscal year 1881, under the provisions of law, on the bonds of the District which were then outstanding.

Congress, by the act making appropriations for the District of Columbia for the fiscal year ending June 30, 1881, approved June 4, 1880, appropriated "for the sinking-fund and interest on the funded debt, exclusive of water bonds, one million one hundred and fifty-five thousand five hundred and eighty-three dollars and fifty-five cents," the exact amount estimated.

The act authorizing and directing the Treasurer to issue 3.65 bonds to redeem outstanding certificates of the late board of audit was not passed until twelve days after the passage of the act making the appropriation.

The amount appropriated for the payment of interest by the prior act will not be sufficient to pay the interest falling due during the fiscal year 1881, on all the bonds previously outstanding and those to be issued under the act of June 16, 1880.

The question therefore arises, did Congress intend that the sum appropriated should be applied exclusively in paying interest on bonds outstanding prior to the act of June 16, 1880, or that all should share the benefit of the appropriation? The act of June 16, 1880, makes the new bonds "*subject to all the conditions*," pledges of faith, and exemptions, as bonds previously outstanding. One of the "conditions" impressed on these bonds by the act of February 20, 1875, is—

"That the United States will, by proper proportional appropriations * * * and by causing to be levied upon the property within said District, such taxes as will do so, provide the revenues necessary to pay the interest on said bonds as the same may become due."

Another condition impressed on the bonds by the act of June 11, 1878, is, that—

"The Secretary of the Treasury shall pay the interest on the 3.65 bonds of the District of Columbia * * * when the same shall become due and payable."

Congress was so careful to provide the certain means of payment that, in case the District should fail to raise its proper proportion, an advance from the Treasury is provided for.

The new bonds to be issued under the act of June 16, 1880, were made "subject to all" these "conditions." In other words, it is manifest that they were, by the act of June 16, 1880, in all respects, placed on the same footing as and with all the rights of prior bonds. Unless the language of a statute imperatively so requires, it should never be so construed as to impute to Congress a purpose to refuse payment of an admitted and overdue liability, and a purpose to withhold from officers of the Government the means of performing duties imposed by Congress; yet these results follow if it be decided that the interest on the new bonds cannot be paid.

It may be said that one of the "conditions" to which these bonds are subjected is, that estimates shall be made and submitted to Congress for the amount required to pay interest, (Rev. Stats., 3669, act June 11, 1878, 20 Stats., 104,) and that an appropriation shall be made. Estimates were made and submitted to Congress for bonds of this class generally—"for interest on the funded debt of the District."

But it will not be doubted that Congress can appropriate without such estimate. If, after the appropriation act of June 4, 1880, it had been expressly provided by law that the previous appropriation "shall be applicable to the payment of interest on bonds since issued," no doubt would exist on the subject. The provision in the act of June 16, 1880, that the new bonds shall be "subject to all the conditions" of the prior bonds, has the effect to make the existing appropriation applicable to the payment of interest on all the bonds alike.

It may be observed that the appropriation made by the act of June 4, 1880, is "for the sinking-fund and interest on the funded debt." If this stood alone, it might well be worthy of consideration, whether its language would not apply to the "funded debt," not merely as it was, but as it might be. It is for the "funded debt," and the bonds are part of the funded debt. The maxim applies—*generalis regula generaliter est intelligenda*. (6 Rep., 65; Broom's Legal Max., 647; 8 Rep., 154.) The former practice as to appropriations for interest on the public debt corroborates this view.

The subject of appropriations by act of Congress is one of great importance.

Appropriations so made are either (1) annual, (2) permanent annual, or (3) continuous. (Wood's case, 5-6, *ante*; 3 Op., 415.)

An *annual* appropriation can only be used to pay for services rendered or supplies furnished *during the year*, though the amount may be ascertained and paid at any time before an unexpended balance is carried to the surplus fund under the act of June 20, 1874. (18 Stats., 110.)

The appropriation for the payment of interest on the public debt is a "permanent annual appropriation." (Rev. Stats., 3689.) The act of February 9, 1847, (9 Stats, 123,) which *directed* the Secretary of the Treasury "to cause to be paid out of any money in the Treasury not otherwise appropriated any interest falling due on the public debt," was *per se* a permanent appropriation—the first for this purpose passed by Congress—different in language and principle from the act of June 11, 1878, which, although it declared that the Secretary "should pay," yet did not give authority, as did the act of 1847, to appropriate, or take for that purpose, "any money in the Treasury not otherwise appropriated." But prior to any permanent appropriation for interest, annual appropriations were applicable, not merely to *public debt* existing at the date of the appropriation, but also to any of *such debt* existing within the time of the appropriation. The question whether an act directing the Secretary of the Treasury to pay specified demands carries with it the means of doing so—in other words, makes also an appropriation—or only establishes a vested right, (20 Wall., 187,) must depend on the character of the act and other circumstances indicating the intention of Congress.

A special act directing the Secretary of the Treasury to pay a given sum to a person named, operates as an appropriation of the money required for the purpose, and such acts are *continuous*.

Examples of acts which have been construed as carrying appropriations may be found as follows: April 13, 1860—Francis Huttman, 12 Stats., 837; May 25, 1860—Ann Scott, 12 Stats., 842; June 9, 1860—Samuel J. Hensley, 12 Stats., 847; June 23, 1860—Mrs. A. W. Angus, 12 Stats., 870; August 6, 1861—Arnold & Willett and Henry North, 12 Stats., 899; May 1, 1862—Francis Huttman, 12 Stats., 903; April 17, 1872—Peck, Van Hook & Co., 17 Stats., 652; May 21, 1872—Fannie M. Jackson, 17 Stats., 662; May 23, 1872—R. A. Mayo, 17 Stats., 662; May 27, 1872—L. Merchant & Co., 17 Stats., 664; May 28, 1872—W. H. Otis, 17 Stats., 678; June 8, 1872—Mrs. R. A. Kennedy, 17 Stats., 679; June 8, 1872—Charles Hipp, 17 Stats., 684; June 10, 1872—H. B. Shepard, 17 Stats., 698; June 10, 1872—T. D. West, 17 Stats., 700; February 4, 1873—John T. Mason, 17 Stats., 723; February 14, 1873—S. E. Ward, 17 Stats., 730; February 15, 1873—Warren & Moore, 17 Stats., 730; February 25, 1873—John B. Emerson, 17 Stats., 737; March 3, 1873—Minerva Lewis, 17 Stats., 787; May 19, 1874—J. T. Watson, 18 Stats., 553; June 3, 1874—W. B. Thomas, 18 Stats., 555; June 22, 1874—John Dold, 18 Stats., 603; June 22, 1874—J. and W. R. Wing, 18 Stats., 606; March 3, 1875—C. Parker, 18 Stats., 679; June 2, 1876—J. T. Sor-

rells, 19 Stats., 437; June 12, 1876—P. Wright & Sons, 19 Stats., 437; June 14, 1876—A. F. McMillan, 19 Stats., 442; July 6, 1876—S. E. Rhea, 19 Stats., 454; July 17, 1876—E. D. Franz, 19 Stats., 468; July 17, 1876—L. Rosenbaum, 19 Stats., 469; July 25, 1876—H. P. Jones & Co., 19 Stats., 467; July 27, 1876—R. Brown, 19 Stats., 468; December 16, 1876—D. Shinault, 19 Stats., 502; July 17, 1877—R. J. Henderson, 19 Stats., 505; March 3, 1877—Western and Atlantic Railroad Company, 19 Stats., 402; March 3, 1877—Catherine Harris, 19 Stats., 539; June 10, 1878—George R. Dennis, 20 Stats., 540; June 14, 1878—Mrs. A. Rains, 20 Stats., 544; June 15, 1878—W. T. Malster, 20 Stats., 568; February 13, 1879—B. S. Craft, 20 Stats., 596; March 3, 1879—H. M. Billingsley, 20 Stats., 665; March 3, 1879—Isaiah Pickard, 20 Stats., 665; March 3, 1879—J. Fraser, 20 Stats., 666; act June 14, 1880—W. B. Farrar.

Such acts, directing payment to be made, enjoin the performance of a duty, and by approved rules of construction imply the right to use the means necessary to the end.*

* In an opinion of Hon. A. G. Porter, First Comptroller, May 6, 1880, in the claim of the State of Kansas to five per cent. of the net proceeds of sales of public lands in said State, he said:

“It has been assumed, in considering this claim, that the clause in the act for the admission of Kansas, which declares that five per cent. of the net proceeds of the sales of all public lands lying within said State shall be paid to the State, carried with it an appropriation of that amount. [Act January 29, 1861, 12 Stats., 126, sec. 3.] In the acts containing a like provision with respect to sales of public lands in other States, the clause has uniformly been held, in the Treasury Department, to contain an appropriation. Section 3689 of the Revised Statutes, which establishes *permanent annual appropriations* for the payment to certain States of five per centum of the net proceeds of sales of public lands lying within their limits, treats clauses in the acts for the admission of Wisconsin, Minnesota, Oregon, and Nevada, expressed in precisely the same terms, as carrying an appropriation. That section does not, however, include Kansas in the list of States for which an appropriation is there provided, and it is the only section in those statutes that makes appropriations for payment to States of five per cent. of the proceeds of the public lands therein.

“The act for the admission of Kansas does not seem to have entirely escaped the notice of the revisers, for the substance of some of its provisions have been incorporated into their revision.

“A question might, therefore, arise whether the five per cent. appropriation in the Kansas act is not repealed by the first clause of section 5596 of said revision.” [Sec. 5597.]

“The reason given in the first section for treating as repealed all acts of Congress passed prior to December 1, 1873, any portion of which is embodied in any section of said revision, is, that all parts of such acts have been repealed or superseded by subsequent acts, or are not general and permanent in their nature. The fact, however, in relation to said appropriation clause in the Kansas act is, that it has never been repealed or superseded by any subsequent act. In a letter written on the 24th of November, 1877, by Chief Justice Waite to Mr. Middleton, late clerk of the Supreme Court of the United States, and by the latter filed in this office, the Chief Justice, after quoting section 5596, says:

“‘This clause, as is seen, contains not only the repeal but the reason of it. It asserts as such reason the assumed fact that all portions, not included in the Revised Statutes, of acts which have been partially incorporated therein, either have been repealed or superseded by subsequent acts, or are not general and permanent in their nature. It seems clear from this that if a particular section of an act has neither been

I have gone beyond the inquiries submitted to me, to present some general views as to appropriation acts, because of the frequent recurrence of questions the solution of which may be aided by the views now presented.

It does not follow that, because the existing appropriation for payment of interest on the bonds of the District of Columbia may be insufficient to pay all the interest maturing during the current fiscal year, no part of it can be applied for the benefit of the new bonds.

Congress will meet in December next, and it is to be presumed will make the necessary appropriation to pay all the interest maturing during the current fiscal year.

I am of opinion, therefore, that the interest on the new bonds may be paid out of the appropriation for the current fiscal year.

The bonds will have attached thereto coupons apparently overdue, and as having matured prior to the current fiscal year. These can be paid out of the appropriation for the current fiscal year.

The coupons for previous years constitute a liability actually accruing during the current fiscal year.

Very respectfully,

WM. LAWRENCE,

Comptroller.

Hon. JAS. GILFILLAN,

Treasurer of the United States.

repealed or superseded by subsequent acts, nor incorporated into the Revised Statutes, and is general and permanent in its nature, it is not within the reason and ground of the repeal, but has been accidentally overlooked or omitted by the revisers, and should not be regarded as within the intent and meaning of the repealing clause.'

"The Chief Justice adds that, in an informal manner, he had consulted his brethren upon the matter, and that they concurred with him in this opinion.

"Upon the back of the letter is an endorsement made by the Secretary of the Treasury in the following words:

"'Upon the clear opinion of the Chief Justice, concurred in, as it seems, by his associates, I think you [First Comptroller Tayer] will be entirely justified in acting upon his construction of the law in passing the accounts referred to. Other omissions in the Revised Statutes covered by the same reasoning have been called to my attention, and, without seeking to strengthen the opinion of the Chief Justice, I only express my concurrence in it.'

"I feel justified by these opinions, from sources so authoritative, in concluding that, if the five per cent. appropriation in the Kansas act was not preserved by other clauses in the sections above quoted, as I am strongly inclined to think it was, it was at any rate not repealed by the first clause of the first of said sections." (See U. S. vs. Bowen, 100 U. S., 508.)



HERNDON'S CLAIM.

1. A deputy collector of internal revenue is not an *officer* within the meaning of sections 1763, 1764, and 1765 of the Revised Statutes. He is an employé of the collector.
2. Such deputy, when designated by the Commissioner of Internal Revenue to assist a collector in making surveys of distilleries, is not an officer.
3. Sections 1763, 1764, 1765 of the Revised Statutes considered as affecting the salary, pay, and emoluments of officers and others in the public service.
4. The combined effect of sections 1763 and 1765 is, as said by the Attorney-General, "to forbid officers holding one office to receive compensation for the discharge of duties belonging to another."
5. On this subject a person who renders services unofficial in character and by *contract* does not generally occupy the position of an officer or employé, and is not subject to the prohibitions of section 1765.
6. The prohibition of section 1765 against "additional pay, extra allowance, or compensation," applies to all persons in the public service and *clothed with public authority*, whose salary, pay, or emoluments are fixed by "*law*" or "*regulation*," whether they are to be paid directly by the Government, or receive compensation from allowances made from the Treasury to other officers, by whom they are appointed and to whom they are responsible for service.
7. The mode adopted by the Secretary of the Treasury of making allowances for deputy collectors, as such, and assistants in making surveys of distilleries, is a "*regulation*" within the meaning of section 1765 of the Revised Statutes.
8. Public officers clothed with discretion in expending contingent funds, and who determine the pay of persons employed in executing the purposes of the fund, thereby make a "*regulation*" within said section 1765.
9. If the United States has a set-off, but omits to set it up, against a party who sues on a claim in the Court of Claims, and judgment be rendered in favor of such claimant, no right as to the set-off is concluded.
10. A ruling of the Court of Claims different from that of the First Comptroller of the Treasury in a similar matter, is not authoritative to change the practice of the Comptroller. A ruling of the Supreme Court is final and authoritative.
11. The duty to re-examine rejected claims considered.

Wm. I. Landrum, collector of internal revenue in the eighth Kentucky district, appointed Wm. Herndon a deputy collector, who served in that capacity from August 1, 1873, to March 31, 1875. (Rev. Stats., 3148; act Feb. 8, 1875, sec. 12, 18 Stats., 309; act March 1, 1879, 20 Stats., 329.)

The law gave the deputy "like authority in every respect to collect the taxes levied or assessed within the portion of the district assigned to him, which is by law vested in the collector himself," but the collector is "responsible for all moneys collected." His compensation as deputy was fixed as hereafter stated.

On the 20th of May, 1873, the Commissioner of Internal Revenue designated Herndon to assist the collector in making surveys of distilleries in his district, and prior to April 1, 1875, *during the time he was deputy collector*, he was so employed one hundred and ninety-eight days, for which his *per diem* compensation charged was \$990. The collector rendered his accounts from time to time to the Treasury Department, giving himself credit with payments of \$1,200 annual salary made to Herndon as deputy collector, as also with said \$990 *per diem* as assistant in making surveys.

The First Comptroller disallowed the item of \$990, holding that it was erroneously paid by Landrum to Herndon, and so erroneously credited to Landrum.

Herndon sued the United States to recover the \$990 in the Court of Claims, and it was decided that there was "no privity of contract between the United States and the deputy collectors for the payment of their salaries," but that they were *employés* of the collectors, "by whom they were appointed, and by whom they were to be compensated;" that before the act of March 1, 1879, (20 Stats., 329,) "the United States were not liable to deputy collectors * * * for payment of their services." (*Herndon vs. U. S.*, 15 Ct. Cls.; *Driscoll vs. U. S.*, 13 Ct. Cls., 15; and 96 U. S., 421.) The Court said:

"The Secretary of the Treasury adopted the practice of granting special allowances [for deputies] under section 3145, Rev. Stats.

"Before the commencement of each fiscal year, the Secretary, at the request of the collector, determined the extent of such special allowances to him, stating the amount which would be granted for a specified number of deputies. The collector was thus informed what he could rely upon in that regard. He might still appoint, as provided by law, as many deputies as he might think proper; but, whether he appointed more or less, his special allowance on account of them was limited to the number specified by the Secretary."

The practice was, however, to require of the collectors vouchers for salaries of deputies.

During the time in which salaries were taxed the collector was permitted to deduct the amount paid deputies in making up his taxable income.

The act of 1879 made a change in phraseology on the prior law, but the practice remains the same, in adjusting accounts, of requiring of collectors vouchers for salaries paid deputies. No separate account is kept for deputies. (18 Stats., 309; 20 Stats., 329.)

This practice of making allowances to all collectors commenced July 1, 1873, and yet continues. The general usage has been to make allowances, estimating annual compensation to deputies at \$1,200.

As to compensation for persons designated to assist in making surveys, the Commissioner of Internal Revenue, in a letter to the First Comptroller, August 21, 1880, says that—

“Under section 10, act July 20, 1868, amended by section 12, act June 6, 1872, (Rev. Stats., 3264,) the amount allowed *per diem* to all persons so designated was \$5, except in the third California, Utah, and Washington Territory districts, where the allowance was \$7 *per diem*” (Act March 1, 1879, 20 Stats., 334, sec. 5.)

During April, 1875, Herndon was employed five days, under the designation of the Commissioner of Internal Revenue, to assist the collector in making surveys, at a compensation of \$5 per day. (Rev. Stats., 3264; act March 1, 1879, 20 Stats., 334, sec. 5.)

In his action in the Court of Claims he recovered judgment against the United States for this. No defence was made and no set off was presented.

July 6, 1880, Herndon asked the First Comptroller to reopen the disallowance and pay the disallowed item, on the ground that the Court of Claims had in effect decided in his favor.

George L. Douglass, attorney for claimant.

As Herndon's salary did not amount to \$2,500, his claim is not affected by Revised Statutes, 1763, and section 1764 cannot affect it. Section 1765 does not exclude the claim.

I.—The words “shall receive” imply *from the United States*, and Herndon, in his capacity as deputy, never received, nor was he entitled to, pay from the United States. (*Herndon vs. U. S.*, 15 Ct. Cls.)

II.—Herndon, as deputy collector, was “not an employé of the United States,” and hence section 1765 does not apply. (*Herndon vs. U. S.*, 15 Ct. Cls.) If the \$990 is allowed, it may ultimately go to Herndon, but this does not affect the legal *status* of the claim. It is none the less a debt *due to the collector*.

III.—The prohibition of section 1765, against the receipt of two salaries, is limited to “salary, pay, &c., fixed by *law or regulations*,” and the compensation of Herndon was not *so fixed*, either as *deputy* or *surveyor*. His pay as deputy was *in the discretion of the collector*. The pay of surveyor was in the *discretion* of the Commissioner of Internal Revenue, and was fixed by a special letter in each case—no regulation on the subject having ever been issued.

IV.—The suspension [disallowance by the First Comptroller] of the \$990, was solely on the assumption that *Herndon* was indebted to the United States for erroneous payments previously made him, [of the salary of \$1,200 per year paid to Landrum,] but the judgment for \$25 in

his favor is conclusive that he *was not so indebted*, else the judgment would have been against him, under section 1061, Revised Statutes.

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

The real *question* on the *merits* to be decided is, whether Herndon could be lawfully paid *both* the *salary* and the *per diem*. If so, Landrum is entitled to credit in his account as collector with the \$990; otherwise, not.

The decision of this question involves a construction of sections 1763, 1764, and 1765 of the Revised Statutes. The first of these sections is as follows:

"SECTION 1763. No person who holds an office, the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duties of any other office, unless expressly authorized by law."

Its history is brief:

The act of September 30, 1850, (9 Stats., 542,) prohibited payment "to one individual" of "the salaries of two different officers on account of having performed the duties thereof at the same time."

This was followed by act of August 31, 1852, (10 Stats., 100,) which is carried into the Revised Statutes as section 1763, and which was there regarded as having superseded the act of 1850. This act of 1850 has a history. The census act of May 23, 1850, sec. 20, made a retro-active provision for compensation of the secretary of the Census Board. The act of July 30, 1852, (10 Stats., 25, sec. 3,) gave it also a prospective effect. The act of August 31, 1852, (10 Stats., 100, sec. 18,) was designed to repeal or take away the prospective benefits of the act of July 30, 1852. It became a general law, the necessity of which was made apparent by provisions for a single officer.

The construction put upon it is, that "an individual holding an office shall not receive the salary of another which he does not hold, but of which, by temporary appointment or otherwise, he merely performs the duties. It does not prohibit the holding of more than one office with the salary of each."

Six Attorneys-General have so held. (5 Op., 765; 6 Op., 80; 9 Op., 507; 10 Op., 446; 12 Op., 459; Mr. Devens, June 11, 1877; 15 Op., 306.)

And so the courts have held. (*Converse vs. U. S.*, 21 How., 463; *Collins vs. U. S.*, 15 Ct. Cls.; *Talbott case*, 10 Ct. Cls., 426; Rev. Stats., 2062, 2063; see act March 3, 1853, Rev. Stats., 176; Rev. Stats., 255; act August 4, 1854, Rev. Stats., 3614.)

This section does not prohibit dual salaries for dual officers; but if

construed as standing alone, and by its own terms, officers having an annual salary of \$2,500 cannot receive "compensation for discharging the duties of any other office" which they do not hold, "unless expressly authorized by law."

It relates exclusively to *officers* and *salaries* of *officers*.

There are provisions forbidding some persons from holding two of certain specified offices. (Rev. Stats., 1222, 1223, 1224, 2062, 2063.)

Now to apply these principles to the case under consideration :

If Herndon *held two offices*, one of *deputy collector* and one of *assistant of the collector in making surveys of distilleries*, he is entitled to the \$990 before referred to. But he did not hold *two offices*; the Court of Claims calls him, as deputy collector, an *employé* of the collector. He was not, for the purposes of *this section*, an officer. (U. S. *vs.* Hartwell, 6 Wall., 393; 13 Wall., 575; 20 Wall., 188; Mallory's case, 3 Nott. & H., 257; Kirby's case, *Ib.*, 265; U. S. *vs.* Belew, 2 Brock., 280; Graham *vs.* U. S., 1 Nott. & H., 380; Com. *vs.* Sutherland, 3 S. & R., 149; U. S. *vs.* Germaine, 99 U. S., 508.)

As assistant in making surveys, he was not an *officer*.

He was designated as such by the Commissioner of Internal Revenue, who is not the head of a department, and, by the Constitution, officers can only be appointed by the President, the courts of law, or heads of departments. (Art. 2, sec. 2.)

Hence it cannot be said the sum now claimed is "compensation for discharging the duties of an office * * * expressly authorized by law."

The next section of the Revised Statutes to be considered is as follows :

"SECTION 1764. No allowance or compensation shall be made to any officer or clerk by reason of the discharge of duties which belong to any other officer or clerk in the same or any other Department; and no allowance or compensation shall be made for any extra services whatever which any officer or clerk may be required to perform, unless expressly authorized by law."

This relates to (1) compensation for an *officer* or *clerk* who discharges the duties of any other officer or clerk, and (2) to compensation for *extra services* of an officer or clerk outside of his regular employment, either in the line of his duty or of a separate employment. (Stansbury *vs.* U. S., 8 Wall., 33.)

This section has no application to the subject under consideration.

Again it is provided :

"SECTION 1765. No officer in any branch of the public service, or any other *person* whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or com-

pensation in any other service or duty whatever for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation."

The history of this provision is in part found in *Hoyt vs. U. S.*, 10 How., 141; *U. S. vs. Shoemaker*, 7 Wall., 341; *Stansbury vs. U. S.*, 8 Wall., 36; and *Converse vs. U. S.*, 21 How., 463; act March 3, 1839, 5 Stats., 349; act August 23, 1842, 5 Stats., 510; act June 20, 1874, 18 Stats., 109, sec. 3; act May 1, 1876, 19 Stats., 45; Opinion Attorney-General, June 11, 1877; 15 Op., 608.

This section relates to *extra* pay or allowances. It applies to *officers* "in any branch of the public service whose pay or emoluments are fixed by law or regulations," and to "any other person [in public service] whose salary, pay, or emoluments are fixed by law or regulations."

Its purpose is to declare (1) that a salaried *officer* who discharges (a) duties not in the line of his office, or (b) extra services in the line of his office, shall not be paid for the performance of such extra duties or services, and (2) that persons who are not officers, but whose salary, pay, or emoluments for whatever service they may render "in any branch of the public service" are "fixed by law or regulations," shall not, by rendering *other services*, receive compensation therefor. In other words, a *salaried officer* cannot secure compensation or extra pay (1) for performing the duties of some other *officer*, or (2) for rendering other services unofficial in their character. And a *Government employé* or other person who is not an *officer*, but who, for the general service in which he is engaged, is entitled to pay "fixed by law or regulations," cannot secure compensation or extra pay (1) for performing the duties of some other officer, or (2) for rendering other services unofficial in their character. Thus, in *U. S. vs. Shoemaker*, 7, Wallace, 338, a *salaried officer* was denied compensation for unofficial services for disbursing funds in a different line of duty. And so in *Hoyt vs. U. S.*, 10 How., 132-141.

These remarks apply only to section 1765.

I have already said that one person may hold two or more offices and be entitled to the pay of both.

And it might be urged with great force that, under the combined operation of sections 1763, 1764, and 1765, an *officer*, whose annual compensation is less than \$2,500, is not prohibited from receiving compensation for discharging the duties of *another office* which he does not hold.

It might be urged with much plausibility, that the comprehensive language of section 1765 is to be taken in connection with that of 1763, and both construed *in pari materia*, and effect given to both and to all parts of each. (Sedgwick on Stats., 200; *Com. vs. Duane*, 1 Binn., 601; *Com.*

vs. Alger, 7 Cush., 53–89; 2 Mich., 138; 31 Ala., 227; 5 Cal., 169; 13 Iowa, 310; 13 Ohio St., 382; 12 Minn., 388; 7 Nev., 19; *Strode vs. Justice*, 1 Brock, 162; *Johnson vs. Byrd*, Hemp., 434; *Beals vs. Hale*, 4 How., 37; *Dubois vs. McLean*, 4 McL., 489; *Patterson vs. Winn*, 11 Wheat., 385; *The Harriet*, 1 Story, 251; *U. S. vs. Hewes Crabbe*, 307; *Ogden vs. Strong*, 2 Pa., 584; 32 Texas, 204; *Fouke vs. Fleming*, 13 Md., 392; 8 Ind., 399; 5 Mich., 114; 97 Mass., 466; 14 Md., 184; 35 Cal., 576; 36 Miss., 572; 5 Blatch., C. C., 512.)

But the Attorney-General, in his Opinion of June 11, 1877, says:

“The construction which has been given to these (sections 1763, 1764, and 1765) statutes (especially in the case of *Converse vs. U. S.*, 21 How., 463) is that the intent and effect of *them* is to forbid officers holding one office to receive compensation for the discharge of duties belonging to another, or additional pay, extra allowance, or compensation for such other services or duties where they hold the commission of but a single office, and by virtue of that office, or in addition to the duties of that office, have assigned to them the duties of another office.” (15 Op., 307.)

This evidently applies to the exclusion of extra compensation without regard to the *amount* of the salary of the officer.*

Heads of departments and other officers are necessarily intrusted

* In the annual report of the First Comptroller for 1879, it is said:

“Section 1763 of the Revised Statutes enacts that no person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duties of any other office, unless expressly authorized by law. Section 1764 prescribes that no allowance or compensation shall be made to any officer or clerk by reason of the discharge of duties which belong to any other officer or clerk in the same or any other department; and that no allowance or compensation shall be made for any extra services whatever which any officer or clerk may be required to perform, unless expressly authorized by law. Section 1765 declares that no officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation. It has been steadily held under these several provisions that to no officer or clerk performing additional services in the same line of duty or performing duties which belong to another officer or clerk, can an extra allowance or compensation be made for such additional service; but the Attorney-General has expressed the opinion in several instances where his opinion has been requested, that an officer or clerk who holds two distinct commissions, or exercises an employment independent of and distinct from his duties as such officer or clerk, may be paid the salary of both offices or compensation for such additional employment, if the salary of such officer or clerk under the first appointment does not exceed twenty-five hundred dollars, [see Opinion Atty-Gen., Feb. 7, 1877, 15 Op., 608,] and if there is an appropriation out of which payment may be made for this class of work or service, though the statute may not provide for payment of additional compensation to such officer or clerk by name or other identification. It is not meant to call in question this construction of the statute, which so long as the case of *Converse vs. The United States* (21 Howard, 463) shall be regarded as authoritative, cannot well be avoided; but in giving effect in one or two instances, in the adjustment of accounts, to this interpretation, I have not been able to free myself from a lurking suspicion that it was not in harmony with the intention of the framers of these provisions. I deem it proper that the attention of Congress shall be drawn to the manner in which these sections are construed in the particulars mentioned, in order that if the construction is not satisfactory, the statute may be made more perspicuous.”

with the disbursement of contingent funds for objects which cannot be strictly and in detail specified by law in advance, and, upon the doctrine of the Attorney-General, one purpose of these sections was, in such and all cases, to prohibit the allowance of extra compensation for those whose emoluments were already provided for.

It has been held that a Government officer or employé, with a fixed salary or compensation, when summoned as a witness in a case in which fees are to be paid from the Treasury, cannot claim the witness-fees prescribed by law, but may be paid actual expenses. The expenses are provided for by law, (Rev. Stats., 850,) and doubtless because of the prohibition of sections 1763-5.

This section (850) applies to *salaried* officers only, not to officers compensated by fees. (Attorney-General's circular of January 4, 1879.)

It does not apply to officers or employés for whose necessary expenses while travelling, &c., provision is otherwise made by Congress. (*Ib.*)

There are, doubtless, *contractors*, and others whose pay for services is fixed by *agreement*, who, as a general rule, are not excluded from the right to render *other services* for a compensation. (Twenty per cent. cases, 20 Wall., 188; Driscoll *vs.* U. S., 13 Ct. Cls., 15; 96 U. S., 421.) Their pay is fixed by *contract*. A mail-carrier under contract, or contractor on public buildings or works, could doubtless be designated to perform any duty authorized by law and receive the authorized pay.

There is a manifest difference, too, between contractors for the performance of a particular work, and persons in the public service clothed with *public authority*.

It is argued with great ingenuity and ability that the prohibition of section 1765 does not apply in this case, and I proceed to notice the points presented:

I.—It is said that the prohibition only applies to a person who is claiming money for himself from the *United States*.

But this cannot be sound:

The Government is a great impersonal, political, perpetual corporation, of which every citizen is a member—it unites all in an indestructible unit in mores sense than one—*e pluribus unum*. In it every voter is a source of authority. It can only act through its officers, agents, or employés. Whether Herndon is to be paid by the Treasurer of the United States or the collector, his compensation comes from the United States. If he is in *all other respects* within the operation of this section, its prohibition against double pay cannot be defeated, because it is to go to him through the collector.

In one sense it may be said that (1) the *legal title* to the claim and, when paid, also to the money, is in Landrum, the collector, and (2) it is an "*allowance*" to *him* for specific services which he may have performed by one or more deputies, in his discretion.

Landrum had a "*salary*" *fixed by law*. (Rev. Stats., 3145.) If *he* receives this money for himself, it is either (1) without rendering any service therefor, or it is (2) for services rendered by him or a deputy for him.

(1.) If it be an "*allowance*" to *him* without services, it falls within the prohibition that "no officer * * * shall receive any additional pay, *extra allowance*, or compensation * * * in any other service or duty."

It is clearly within the spirit of the prohibition. If the collector cannot have extra pay for extra service, he certainly cannot without any service. The greater includes the less.

(2.) If it be an "*allowance*" for extra or "*other service*" performed *by him*, it is clearly within the prohibition. But the allowance is because of services to be rendered by one or more deputies, whose powers are conferred by law. If there be no such *service*, there can be *no pay*. If the collector's deputy was for *all purposes* his employé, then the service was *his*, in legal effect the same as if rendered by him in person, and so he is within the prohibition. The allowance was in fact and legal effect made for the *deputy*. If there was no deputy, the allowance could not be paid. True, an allowance made for one might be used for several, but still it was for *their services*.

The deputy, Herndon, is the real person by whose services the right to the money now claimed is to be settled. The money is *for him*. If Landrum collects it, he may be clothed for the time being with the naked legal title to the money, but he is, nevertheless, a mere *custodian* or *trustee*, and can be required to account for it to the deputy. (Dris-coll *vs.* U. S., 13 Ct. Cls., 15; 96 U. S., 421.)

If two deputies had been employed, the trust would have resulted for them. The policy of the law, based on good morals and honesty, would not permit such custodian and trustee to reserve any part of the money for himself.

The Court of Claims has decided that there is privity of contract between collector and deputy; that the latter is the employé of the former, and hence the deputy is the *cestui que trust* or beneficiary of the fund. The deputy is more than the mere employé of the collector; he is clothed with *public authority*.

This section (1765) looks beyond the legal claimant, to the real bene-

ficiary, to the person in the public service exercising public authority. To hold otherwise is to defeat the purpose of the section by force of mere words rather than real results.

Clerks in the Departments are appointees of the heads thereof, and are paid by disbursing clerks, but all are in the service of the Government. They could not escape the prohibition of section 1765 by a law which would render them dependent for pay on allowances to the head of the Department.

When the Court of Claims said that deputies were *employés of the collectors*, that was true for the purpose then being considered—the right of payment arising from privity of employment.

The Attorney-General held that the officers of the Metropolitan police board were “in the service or employment of the United States,” because, he said, “the office they hold is created and its duties defined by act of Congress.” They were clothed with public authority. (10 Op., 105; 20 per cent. cases, 13 Wallace, 568; 20 Wallace, 179; 1 Nott & H., 380; 3 Nott & H., 257–265; 3 S. & R., 149; 2 Brock, 280.)

II.—It is alleged that Herndon was not an employé of the United States, and is hence not within the prohibition. This is sufficiently answered by what has already been said. And it may be added that if Herndon was not an employé of the Government, Landrum was an officer, and he is within the prohibition, and so cannot be allowed this claim.

But Herndon was in *the service of the Government*, clothed with public authority, both as *deputy* and as *assisting in surveys*. As deputy he looked to the collector for his pay to be obtained from the Treasury, and for surveys his claim was directly on the Treasury. (*Herndon vs. U. S.*, 15 Ct. Cls.)

The accounting officers of the Treasury keep an account and settle with and pay the deputy directly, and not through the collector, for services in making surveys.

The purpose of section 1765 is to prohibit double or extra pay to any person in the service of the Government, and who in person or through another is entitled to pay in amount fixed by law or regulation.

III.—It is urged that Herndon's pay was not in amount fixed by “law” or “regulation.” Prior to the act of December 24, 1872, which abolished the office of assessor and devolved its duties on the collector, the pay of deputy collectors was not fixed in amount by law or regulation, but was included in the salary and commissions of the collector. (Rev. Stats., 3145; 17 Stat., 401.)

With the increased duties of collectors the practice was adopted by the Secretary of the Treasury of making an allowance for deputies, as stated, and it is now too late to call in question the authority for this. (Rev. Stats., 3145.)

The allowance was made specifically to each collector, but the amount was fixed for all the deputies at \$1,200 per year each, the collector having a right with this to employ one or more deputies and apportion between them the compensation so allowed.

Herndon was one of two deputies in the eighth Kentucky district for each of whom a special allowance of \$1,200 per year was made. The mode adopted of making the allowance is a "regulation" within section 1765. The mode of allowance is to be regarded as a "*regulation*" even where more than one deputy was appointed for the single salary of \$1,200.

The *per diem* of \$5 for assisting in making surveys was the same for all so assisting, excepting in the third California, Utah, and Washington Territory districts, and this mode is a "regulation." The exceptions prove the general rule, which is a regulation.

It is enough to exclude Herndon from the double pay, or to exclude Landrum from the legal right to collect it, if it was fixed by regulation, *either* as deputy or assistant in making surveys.

It is not necessary that the *regulation* should be *general*, or prescribe a uniform compensation. A regulation may apply to a single employé.

A regulation is merely a "governing direction." It implies authority on one side—subjection on the other. When applied to pay, it may be in advance of or after the service. It is distinguished from *contract*, which implies the right of all parties to stipulate for terms. There is a distinction between a *contractor* and an *employé*. (Alison's case, 10 Ct. Cls., 449.) A regulation is an order by authority. Like a law, it may be general or special, for a single person. Webster says "a regulation is a limited and often temporary law, intended to secure some *particular* end or object." (See Landrum *vs.* U. S., 16 Ct. Cls.)

An authority in an officer to expend money for a given object in his discretion, carries with it a power to fix the amount of compensation for any authorized service. In such case where an officer fixes a specific sum for a service, the acceptance of service under it is not a contract: it is the acceptance of or submission to authority. The exercise of discretion is authority.

It is not urged that the sum now claimed is relieved of the prohibition of section 1765, because, as that section says, "the same is authorized by law," and is for "other service." This section contemplates that

services "authorized by law," as the disbursement of a contingent fund in the discretion of an officer, or services in executing the purposes of such fund, may be required of or assigned to officers or employes of the Government. But it is so careful to exclude pay for such services in favor of an officer or employe in other duties, that, in order to permit such pay, it requires not only that the services shall be authorized by law, but also that "the appropriation therefor shall explicitly state that it is for such additional pay," &c. In other words, the appropriation must, in terms or by necessary inference, explicitly state that it is for *additional* pay, &c.

IV.—It is maintained that the judgment of the Court of Claims in favor of Herndon for \$25 is conclusive of his right to the \$990.

But this is by no means correct:

1. The Government did not, in the Court of Claims, present any set-off, and it is only when so "set up" that the court can "hear and *determine* such claim." (Rev. Stats., 1061.) No right is concluded which is not adjudicated. It is only when a matter has passed *in rem judicatam* that rights are determined even as between persons. (*Bell vs. McCulloch*, 31 Ohio St., 400.)

2. The Government needs no set-off. It makes no claim for a refund of money. It is resisting a claim made on it, and the objection to paying is, that Landrum has no right to the \$990, because Herndon, for whom he claims it, cannot lawfully claim it.

Other reasons might be presented, but they are unnecessary.

This claim for \$990 must remain *disallowed*. I have not deemed it necessary to rely merely on the former disallowance, or that it "has been once examined and rejected," and "not reopened." Evidently there must of necessity be some end to re-examinations of claims. Some of the authorities on this subject are collected in Wood's case. (*Ante*, p. 9; and see 2 Op., 515; 12 Op., 504; 13 Op., 297; Rev. Stats., 191, 270.)

If the Court of Claims should make a ruling in conflict with a decision of the First Comptroller, in another similar matter, it might present a case worthy of reconsideration, if not within the Revised Statutes, sec. 191, 270. The reasoning of the court would always, in other cases, command respect and be of persuasive weight, because it is one of the ablest courts of this or any country. But it would not be authoritative or conclusive with the First Comptroller, or change a well-considered rule of decision previously adopted by him.

In so holding, I follow the rule of my immediate predecessor. He decided that when he had charged the clerk of the United States district court of the northern district of Mississippi with certain fees,

thereby showing him to be a debtor to the United States, and suit was brought in said court to collect the indebtedness, in which the court held he was not chargeable with the fees, "that the decision of the court does not settle the question of liability for uncollected fees. * * * It will relieve the clerk from the balance standing to his debit, but *no more.*" (Greely *vs.* Thompson, 10 How., 225.)

A decision of the Supreme Court is authoritative and final, and should be followed.

I have discussed these questions at some length, because this and every claim is entitled to mature consideration; and, besides, it is evident that similar questions will frequently arise which it is important should be understood. There will be many cases analogous to this in some of the principles involved.

AUGUST 17, 1880.

IN THE MATTER OF METROPOLITAN POLICE FORCE— POLICE CASE.

1. The act of Congress of June 25, 1868, (15 Stats., 76, sec. 7; Rev. Stats. 1063,) is *prospective*, and hence authorizes heads of Executive Departments to refer to the Court of Claims only specified *claims arising after the date of the act.*
2. Executive officers are not bound by the construction placed on statutes by courts not of last report.
3. The Metropolitan Police force of the District of Columbia is not entitled to the 20 per cent. increased pay granted by joint resolution of February 28, 1867.
4. Whether the reference of a claim by the head of an Executive Department to the Court of Claims dispenses with the statute of limitations as applied thereto—*quære?*
5. As a general rule, it is inexpedient, on grounds of public policy and justice, for Executive officers to waive rights which are fixed by law as necessary to protect the Government.
6. A statute is never to be construed as attempting to divest a vested right if its words will admit of any other construction, and it may be more than doubted if *legislative power* is competent to do so.
7. The act of June 14, 1878, (20 Stats., 130,) only relates to claims under appropriations previously made, balances of which had been exhausted or carried to the surplus fund. *Such* claims are required to be considered.
8. The appropriation made by the joint resolution of February 28, 1867, (12 Stats., 320,) was a "permanent specific appropriation," within the meaning of the acts of June 20, 1874, (18 Stats., 110,) and June 14, 1878, (20 Stats., 130.) There is no limit to the consideration of *such* claims except the presumption of payment arising from the lapse of time.
9. The decision of the Secretary of the Treasury of April 20, 1877, as to "accrued claims," so far as it objects to the examination of claims, does not apply to claims under the joint resolution of February 28, 1867, (12 Stats., 320.)

10. Claims on which balances are "certified" by the First Comptroller cannot be re-opened for examination in the Treasury Department.
11. Under the acts of June 16, 1874, and June 14, 1878, (18 Stats., 75; 20 Stats., 130,) claims arising under previous appropriations, once examined and rejected, cannot be re-examined "unless reopened in accordance with [then] existing law." This recognizes the usage that rejected claims can only be reopened on the ground of error in calculation, or newly-discovered evidence, as in actions after verdict in the courts of law.
12. Salaries and other fixed liabilities arising under statutes may be audited and certified within the authorized time, whether there be an appropriation sufficient to pay or not.
13. The duty to audit and certify claims for the payment of which there is no existing appropriation considered.
14. The act of June 14, 1878, (20 Stats., 130,) as to a class of claims, limits the power of officers to examine such as are brought before them within five years.
15. The presumption of payment arising from lapse of time may be an objection to the allowance of claims.

Under the act of August 6, 1861, a board of police for the District of Columbia was organized, consisting of five commissioners of police, appointed by the President, with the advice and consent of the Senate, and the mayors of Washington and Georgetown were *ex-officio* members of the board.

It was made "the duty of the board * * * to preserve the public peace," &c., and it is declared—

"SECTION 6. That the duties of the board of police shall be more especially executed *under the direction and control of said board, and according to rules and regulations which it is hereby authorized to pass, from time to time, for the proper government and discipline of its subordinate officers,* by a police force for the whole of said police district. * * *"

"SEC. 7. That the said police force shall consist of a superintendent of police, ten sergeants of police, and such number of police patrolmen as the board may deem necessary, not exceeding, for the regular service, one hundred and fifty. The said offices hereby created for the said police force shall be severally *filled by appointment from [of] the board of police; and each person so appointed shall hold office only during such time as he shall faithfully observe and execute all the rules and regulations of the said board, the laws of the United States, and the laws or ordinances existing within the District, enacted by the city or county authorities within the same, and which laws or ordinances apply to such part of the District where the members of the police force may be on duty.*"

"SEC. 24. That the superintendent of police shall make to the board of police *quarterly reports, in writing, of the state of the police district, with such statistics and suggestions as he may deem advisable for the improvement of the police government and discipline of said district: and the board of police shall annually, on or before the First Monday in November, report, in writing, the condition of the police within said District to the Secretary of the Interior.*" (12 Stats., 320.)

The statutes affecting the Metropolitan police from its organization till February 28, 1867, were as follows:

Organic act, August 6, 1861, 12 U. S. Stats., 320.

Act July 16, 1862, 12 U. S. Stats., 578.

Legislative appropriation act, June 24, 1864, 13 U. S. Stats., 159, *increases the pay* of the officers and the force, and directs the authorities of the District of Columbia to pay said increase.

Legislative appropriation act, March 2, 1865, 13 U. S. Stats., 459, appropriates salaries for the fiscal year ending June 30, 1866.

Act July 23, 1866, 14 U. S. Stats., 212, increases the force.

Act December 20, 1866, 14 U. S. Stats., 374.

The act of April 27, 1816, (Rev. Stats., 510,) directs the Secretary of the Interior to report once every two years to Congress a list of officers and agents in the service of the United States.

The "Blue Book" shows that the Secretary uniformly reported the members of the police force as officers of the Interior Department.

The joint resolution of Congress of February 28, 1867, provides—

"That there shall be allowed and paid, out of any money in the Treasury not otherwise appropriated, to the following-described persons, now employed in the civil service of the United States at Washington, as follows: To civil officers, temporary and all other clerks, messengers, and watchmen, including enlisted men detailed as such, to be computed upon the gross amount of the compensation received by them, and employés, male and female, in the Executive Mansion, *and in any of the following-named* DEPARTMENTS *or any* BUREAU *or* DIVISION *thereof*, to wit: State, Treasury, War, Navy, INTERIOR, Post Office, Attorney-General, Agricultural, and including civil officers, and temporary and all other clerks and employés, male and female, in the offices of the *Coast Survey, Naval Observatory, Navy-Yard, Arsenal, Paymaster-General*, including the division of referred claims, Commissary-General of Prisoners, Bureau of Refugees, Freedmen, and Abandoned Lands, Quartermasters, Capitol and Treasury extension, city post office, and Commissioner of Public Buildings, *to the photographer and assistant photographer of the Treasury Department*, to the Superintendent of Meters, and to lamp-lighters under the Commissioner of Public Buildings, an additional compensation of twenty per centum on their respective salaries as fixed by law, or, where no salary is fixed by law, upon their pay respectively, for one year from and after *the* thirtieth day of June, 1866; but when any of said persons is or shall be only entitled to receive salary or pay for a part of said year, the said twenty per centum shall be computed on the amount such person is so entitled to receive for services in any or all of said departments or offices within said year: *Provided*, That the above-named additional compensation to the employés of the Patent Office shall be paid out of the funds of said office: *Provided further*, That this resolution shall not apply to persons whose salaries, as fixed by law, exceed three thousand five hundred dollars per annum." (14 U. S. Stats., 569.)

At the date of this joint resolution the police force consisted of six commissioners, one treasurer, one secretary, one property clerk, three clerks, three surgeons, five magistrates, one superintendent of police

telegraph, one superintendent of police, one captain and inspector, six detectives, ten lieutenants, twenty sergeants, one hundred and ninety-nine privates, one laborer.

On the 3d of August, 1880, C. E. Creecy, as attorney for members of the police force, addressed a letter to the Secretary of the Treasury, asking that their claim under the joint resolution of February 28, 1867, be referred to the Court of Claims under section 1063 of the Revised Statutes; and on the 16th August he requested that, if the police force is deemed a *class*, and this cannot be considered a *single claim*, the claim of George R. Herrick may be so referred.

The whole subject was by the Secretary referred to the First Comptroller for his opinion.

The 20 per cent. advance under the joint resolution to the members of the police force would amount to \$46,846 86.

The records of this office show the following facts:

June 1, 1872, Geo. R. Herrick prepared and submitted to the First Comptroller a roll of the employés of the Metropolitan police, and asked his views.

On the 12th of June, 1872, the Comptroller issued a circular, saying:

"Sundry persons have presented claims to be allowed * * * the additional twenty per cent. * * * granted by the joint resolution of February 28, 1867, * * * .

"The * * * resolution * * * was repealed by section 4 of the appropriation act, approved July 12, 1870, (16 Statutes, 250.)

"The authority of the Department to pay having been thus withdrawn, a consideration and decision of the several cases would be useless.

"It is not intended to decide as to the rights of claimants, but only to decide that there is no existing appropriation for payment."

In January, 1879, the claim was again presented to the Comptroller by Mr. Herrick; Hon. Montgomery Blair appearing in his behalf.

March 1, 1879, the Comptroller addressed a letter to Mr. Herrick, saying:

"The First Auditor, in reporting the claim to this office, takes the ground that the claim of the Metropolitan Police force, having been disallowed by the First Comptroller, cannot now be considered by the accounting officers under the 4th section of the act of June 14, 1878, (which is the section upon which you rely,) because said section provides that nothing in the said act shall be construed to authorize the re-examination and payment of any claim or account which has been once examined and rejected, unless reopened in accordance with existing law.

"I do not find any record evidence that the Comptroller gave a formal decision upon the right of the police force to the additional compensation, but he did give a written decision (June 17, 1872) upon the

proper application of the joint resolution, and under that decision the police force were excluded from the benefit of its provisions.

"I concur in the Auditor's decision; and, besides his objection, I have to say that the claims which the accounting officers are to receive and examine under section 4, act of June 14, 1878, are only such as were payable from appropriations which have been exhausted or carried to the surplus fund under section 5, act of June 20, 1874, (20 Stats., 130.)

"The appropriation made by the joint resolution was not exhausted nor carried to the surplus fund under said section; therefore accounts or claims payable from that appropriation cannot now be received by the accounting officers of this Department."

The act of July 12, 1870, provides—

"That all acts and joint resolutions, and all resolutions of either House of Congress, granting extra compensation or pay, be, and the same are hereby, repealed, to take effect on the first day of July, 1870; and that the appropriations made by the following parts of acts and resolutions be, and the same are hereby, repealed, to take effect from and after June 30, 1871." (16 U. S. Stats., 250, sec. 4.)

Several appropriation acts are then enumerated, but not the joint resolution of February 28, 1867.

December 2, 1879, the attorneys for the police force made a written request that the First Comptroller re-open the claim on the authority of the "20 per cent. cases." (13 Wallace, 578, and 20 Wallace, 184, &c.)

February 11, 1880, the First Comptroller addressed a letter to the attorneys *denying the request*, (1) for reasons before stated, and (2) because of the decision of the "Secretary of April 20, 1877, in relation to the use of appropriations for the payment of accrued claims." And he adds; "If such examination were admissible, * * * I should be inclined to hold that the police force does not come within the class of persons covered by the joint resolution of February 28, 1867."

C. E. Creecy and *S. J. Wailes*, for the police force, cite 13 Wallace, 580; 20 Wallace, 179; 10 Op., 104; Senate Rep. No. 234, 2d sess. 45th Cong., April 3, 1878.

OPINION OF WILLIAM LAWRENCE, *First Comptroller* :

The Metropolitan Police force of the District of Columbia asserts a claim to the 20 per cent. increased pay, under the joint resolution of February 28, 1867, and asks that the claim of one member be referred, as a test case, by the Secretary of the Treasury to the Court of Claims.

This is not technically, an application for reopening and granting a rehearing of a rejected claim.

The request comes from a numerous and deserving body of men, distinguished for patriotic services, and has been considered with more than usual care.

The reference by the Secretary of the Treasury to the First Comptroller is *general*, and involves (1) the *legal right* to refer the claim to the Court of Claims, (2) *the expediency* of its exercise, and (3) the legal rights of the claimants.

There are abundant reasons for denying the request now made:

I.—The claim is for 20 per cent. increased pay for the year from June 30, 1866, to June 30, 1867. If the claimant has any right, it was perfect June 30, 1867.

The first inquiry, then, is, Was there any law, *then* or *since*, which now authorizes the claim to be referred to the Court of Claims?

I hold that there was none. The first act which authorized claims to be so referred was that of June 25, 1868, (U. S. 15 Stats., 76, sec. 7,) carried into the Revised Statutes, sec. 1063. The original act provides—

“That it shall and *may be* lawful for the head of any Executive Department, whenever any claim is made upon said Department, * * * where the decision will affect a class of cases or furnish a precedent for the future action of any Executive Department, * * * to cause such claim, with all the vouchers, papers, proofs, and documents pertaining thereto, to be transmitted to the Court of Claims, and the same shall be there proceeded in *as if originally commenced* by the voluntary action of the claimant: *Provided however*, That * * * all the cases * * * shall be proceeded in *as other cases pending in said court*, and shall, in *all respects*, be subject to the same rules and regulations.” (Bright *vs.* U. S., 6 Ct. Cls., 118; 8 Ct. Cls., 326, 470; 14 Ct. Cls., 152.)

1. *The true construction of the act of June 25, 1868, is, that it authorizes the head of a Department to refer to the Court of Claims specified claims accruing after the date of the act.*

The construction which gives it this *prospective* character is supported by many authorities. (Sedgwick on Stat., 161; Seaman *vs.* Carter, 15 Wis., 548; Berley *vs.* Rampacher, 5 Duer, 181; Smith *vs.* Auditor-General, 20 Mich., 398; McEwen *vs.* Bulkley, 24 How., 242; Harvey *vs.* Tyler, 2 Wall., 329; Blanchard *vs.* Sprague, 3 Sum., 535; s. c., 2 Story, 164; Butterworth case, 1 W. & M., 323; U. S. *vs.* Starr, Hemp., 469; Prince *vs.* U. S., 2 Gall., 204; Carroll *vs.* Carroll, 16 How., 275; Murray *vs.* Gibson, 15 How., 421; Russell *vs.* Wheeler, Hemp., 3; State *vs.* Blakeman, 52 Mo., 578; People *vs.* Supervisors, 63 Barb., (N. Y.,) 85; 15 Iowa, 257; 7 Allen, 139; 37 Vt., 599; 1 Cold., (Tenn.,) 398; 57 Pa. St., 209; 30 Md., 500; 27 Beav., 579; 41 Mo., 25; 21 Wis., 268; 105 Mass., 287; 48 N. Y., 57.)

These authorities show that practically and generally the rule of the French Code is the rule of American construction—*La roi ne dispose*

que pour l'avenir, elle n'a point d'effet retroactif. (Civ. Code, sec. 2.)
 “The law directs for *future cases* only; it has no retroactive effect.”

2. The danger to the public interests of applying the statute to claims running back through a long period requires the prospective construction. (Sedwick on Stats., 226 *n*; *People vs. Canal Co.*, 4 Ill., (3 Scam.,) 153; *Collins vs. Carman*, 5 Md., 503; *State vs. Clark*, 29 N. J. L., 96; *Henry vs. Tolson*, 17 Vt., 479; *People vs. Admire*, 39 Ill., 251; 2 Mass., 475; 3 Mass., 221, 523; 7 Mass., 490; *In re Day*, 9 Blatchf. C. C., 285.)

The common law in judicial tribunals presumes even judgments paid in twenty years, and every civilized nation has statutes of limitation barring a right of recovery on most claims in much less time. The idea that Congress intended to reverse the policy of the civilized world in all courts by the statute in question requires an extension of credence to which I cannot yield. If such a proposition had been announced in Congress I can scarcely conceive that it would have received a single vote; and that a power to dispense with or maintain this policy was intended by the statute to be intrusted to the unlimited *discretion* of any one man, is what I cannot find in the words it employs. To say that this is *clearly* the purpose of the words it uses, as the rule of construction applicable to retroactive statutes requires, does seem to me, and I say it respectfully and with deference, a palpable perversion of language.

If such was the purpose of the act, then, in the expressive language of the Secretary of the Treasury in his decision of April 20, 1877, on the “payment of accrued claims”—

“It would authorize the payment of the French spoliation claims, or claims growing out of contracts during the Mexican war or the war of the rebellion.”

The Secretary has shown in that decision that in the legislation of Congress of late years—

“It was clearly the intention of Congress to establish a public policy that would confine accounting officers to the adjustment or payment of claims accruing for services rendered, or duties performed, or property purchased, or contracts accrued during a limited period, and to the adjustment of the accounts of disbursing officers, the general design being to cut off the allowance and payment of long-accrued or past-due claims. This policy is so wise that every executive officer ought to contribute to maintain it.”

This policy is equally applicable in construing the statute in question.

The danger of giving this act a retroactive effect will be largely enhanced, too, if it is to be finally held that the six-years' bar of the statute of limitations is not available in the Court of Claims on claims referred

by the head of a Department, although it would be in an action voluntarily brought by the claimant. (Winnisimmet Co. *vs.* U. S., 12 Ct. Cls., 319; Lippitt's case, 14 Ct. Cls., 148; *s. c.*, 100 U. S., 663; Clark's case, 96 U. S., 37.)

The policy of limitation-statutes is one which should not be lightly dispensed with. This subject has been too often discussed to require further comment now. (See Cong. Record, vol. 2, pt. 5, 43d Cong., 1st sess., pp. 4511-4518; 9 Op., 204; Brown *vs.* U. S., 6 Ct. Cls., 191; New York Galaxy, January, 1871, p. 152.)

3. In Winnisimmet *vs.* U. S., 12 Ct. Cls., 322, the learned Chief Justice says:

"While the subject-matter and character of the claims which may be transmitted to this court under this section, (15 Stats., 75,) and the circumstances authorizing their transmittal are defined and prescribed, there is nothing there *fixing a time* within which they shall be transmitted, either *with reference to the date of the accruing of the claim* or to that of its presentation to the Department."

(See U. S. *vs.* McKee, 1 Otto, 443; U. S. *vs.* Lippitt, 100 U. S., 663.)

And it is said that the Revised Statutes furnish a *quasi* legislative interpretation which strengthens "this view," although they were intended to give the previously-existing law *without change* or new construction.

This case was only heard on a motion to dismiss; the particular question as *the power* to refer claims arising prior to the law authorizing the reference does not appear to have been argued; the decision of the motion was by a divided court; the case is not finally disposed of in the Court of Claims; and if it were, the decision would not be final; the case may yet, on appeal, undergo the ordeal of the Supreme Court. (Lippitt *vs.* U. S., 14 Ct. Cls., 155.)

One principal reason assigned for the opinion of a majority of the Court of Claims is, "that no statute of limitations bars the consideration of claims" (14 Ct. Cls., 152) in the Executive Departments. This, it will be seen hereafter, is a clear misapprehension of the law.

The courts are not bound by the construction of a statute made by the Departments of Government, and the Departments are only bound by the construction of statutes made by courts of last resort, and to give effect in particular cases to decisions of other courts unappealed from. (See *ante*, this vol., 16, 17; 10 Op., 56; 12 Op., 386; U. S. *vs.* Dickson, 15 Pet., 141; U. S. *vs.* Lytle, 5 McL., 9; Rowan *vs.* Runnels, 5 How., 139; Merville *vs.* Townsend, 5 Paige, 80; Swift *vs.* Tyson, 16 Pet., 18. Com. *vs.* Whitely, 4 Wall., 522; Gaines *vs.* Thompson, 7 Wall., 351; Decatur *vs.* Paulding, 14 Peters, 515.)

There is, therefore, no *authoritative* decision of the question now presented.

II.—*The claimant has no claim valid in law.*

(1.) For the purpose of this claim, it may be said that the joint resolution of February 28, 1867, gives extra compensation to officers and employés “(1) *in the Interior Department*, or (2) *any bureau* or (3) *division thereof*.” These are the *only* terms under which a claim can be made by the claimant. But he was *not in* the Department. He was not in a *bureau* of the Department. Some of the bureaus are established *by law*, and some, perhaps, by regulation, under section 161 of the Revised Statutes; but the police force is not, by law or regulation, designated as or in a bureau. (Rev. Stats., 158, 162, 437; Alison’s case, 10 Ct. Cls., 449.)

It is not so reported in any of the reports of the Secretary of the Interior. It is not so named in any of the annual reports made by the board of police to the Secretary of the Interior.

The police force is not a *division*, or in a division, of the Interior Department.

It is not so declared by any law or regulation, or in any report of the Secretary of the Interior, or report made by the board of police; nor was it ever so known or called in popular usage. The divisions are established by regulation of the Secretary, except so far as some of the offices established by law are popularly called divisions.

The Secretary of the Interior had *no power* to so call or establish it.

The board of police, by law, owed no duty to, and had no connection with, the Interior Department, except annually to “report, in writing, the condition of the police * * * to the Secretary of the Interior.”

In all other matters, the *board* and the entire force were entirely *independent* of the Department.

The entire duties of the force were “under the direction and control of said board,” which had power to prescribe “rules and regulations for the proper government and discipline of its subordinate officers.”

All this is utterly inconsistent with the idea of control by or subordination to, the Secretary of the Interior, essential to make a division of the Interior Department.

It would seem that this was well understood, from the fact (1) that no claim was made for the extra pay until June 1, 1872—more than five years after the joint resolution; (2) that the First Comptroller has twice, if not three times, refused relief; (3) that Congress, by act of July 28, 1866, increased the compensation of the police \$30 per month to each member, from and after June 30, 1866, including the *same fiscal year covered by the joint resolution*, (14 Stats., 321, sec. 6;) and (4) Congress has refused to give the extra pay, though efforts were made therefor.

Sundry officers are required to *report to Congress*, but they are not thereby made a bureau or division of the legislative branch of the Government.

2. *Manning's case*, 13 Wallace, p. 578, has been cited as similar to the case of the Metropolitan police; but the following differences are observed:

Manning was appointed by the warden of the jail, subject to the approval of the Secretary of the Interior. The commissioners of police were appointed by the President, by and with the advice and consent of the Senate, and the officers were appointed by the board of police.

Manning's compensation was fixed by the Secretary of the Interior. The pay of the police was fixed by act of Congress.

Manning was paid by an officer of the Interior Department, the disbursing clerk. The police were paid by their treasurer, with whose appointment, compensation, and duties the Secretary of the Interior does not appear to have had anything to do.

The opinion of Attorney-General Bates, (10 Op., 104,) as to whether the members of the police force were required to take the oath of allegiance prescribed by the act of August 6, 1861, has been quoted as showing that this organization was a bureau or division of the Interior Department; but the opinion does not show anything more than that the police force was "connected" with the Department, from the fact that the board was required to make annual reports thereto, so as to bring it within the spirit of the act. The purpose of that act was properly construed with reference to the perilous time when it was passed.

3. An effort is made in argument to support the claim by these facts:

"First. In the year 1867 estimates of the expenses for the support of the Metropolitan police were required by the Secretary of the Interior from the Board of Metropolitan Police, which estimates were received by the Secretary and made the basis of appropriations asked for by him from Congress.

"Second. The annual report and returns of arrests were, in the year 1867 and previous thereto, made to the Secretary of the Interior.

"Third. All requisitions for money for printing, &c., were made upon the Secretary of the Interior.

"Fourth. Legal opinions were obtained from the Attorney-General of the United States through the Secretary of the Interior.

"Fifth. In the year 1867, and previous thereto, the Secretary of the Interior heard all charges against Metropolitan-police commissioners, and applications for appointments to that office were made to, also nominations to the office were made by, the Secretary of the Interior.

"Sixth. All communications to Congress and to the Executive were made through the Secretary of the Interior, and also payment to the board of police and police force of salaries were made through him by warrant."

It is sufficient to say that there was *no law to require or authorize any of this*, except that requiring an annual report and the duty to make estimates, which, as to the police force, might have been made at the Treasury Department. But all this did not constitute the police force a *bureau or division* of any Department.

4. The joint resolution contains *internal evidence* that any *connection* the police force had with the Interior Department did not give the members thereof a claim to the increased pay.

It *enumerates* specifically, as entitled to pay, clerks and employés in the offices of the *Coast Survey, Naval Observatory, Navy-Yard, Arsenal, &c.*, although these were by law more *fully connected with* Departments than were the police force with the Interior Department. (Rev. Stats., Coast Survey, 264, 4681; Naval Observatory, 434, 1401; Navy-Yard, 1413, 1416, 1542; Arsenals, 1161, 1866.)

This shows that Congress deemed such *enumeration* necessary to give the pay, without which it could not be claimed; and yet Congress purposely, as we must suppose, *omitted* to enumerate the police force.

There are rules of construction which make this view conclusive against the claimant. *Expressum facit cessare tacitum*. (1 Greenl. Ev., sec. 301; Doe *vs.* Galloway, 5 B. & Ad., 51; Sedgwick on Stats., 360; Covington *vs.* Nickle, 18 B. Mon., 262; Reg. *vs.* Doubleday, 3 E. & E., 501; State *vs.* Goetze, 22 Wis., 363; Pretty *vs.* Jolly, 26 Beav., 606, Zachary *vs.* Chambers, 1 Oregon, 321; Cleveland *vs.* Bank, 16 Ohio St., 236; Williams *vs.* Goldey, Law R., 1 C. P., 69; White *vs.* Ivey, 30 Ga., 186; State *vs.* McGarey, 21 Wis., 496; McIntire *vs.* Ingraham, 35 Miss., 25; St. Louis *vs.* McLaughlin, 49 Mo., 559; State *vs.* Pemberton, 30 Mo., 376.)

There is no such doubt or difficulty in the claim now made as to require any reference to the Court of Claims.

III.—As a question of *expediency*, founded on *principles of law*, this claim should not be referred to the Court of Claims.

1. The question whether the claim, if referred to the Court of Claims, would be barred in that court by the six-years' limitation, is not yet *finally* decided. It is one of grave difficulty, and it may yet be decided that it is so barred. While this remains in doubt, I regard it as inexpedient to refer cases which may finally be held as barred. (Winnissimmet Co. *vs.* U. S., 12 Ct. Cls., 326; Lippitt *vs.* U. S., 14 Ct. Cls., 155.)

There are several interesting questions touching the power of reference, including the right to refer a claim (1) *after* it is *rejected*, or (2)

after a balance is certified as due, which are of much importance. (See *ante*, this vol., 9; act March 30, 1868, 15 Stats., 54; Rev. Stats., 191, 236, 1063; 12 Ct. Cls., 326; 4 Op., 379; 9 Op., 32; 12 Op., 387; 14 Ct. Cls., 155.*)

2. Besides this, if it were now clear that the claim would not be held barred in the court, it should not be referred unless the right to relief is clear, and on reasons *excusing the delay in seeking* relief at the proper time in the Court of Claims, neither of which is shown.

To yield a ready compliance to requests for reference will encourage negligence, and especially invite claimants to delay until the evidence which might defeat them be lost. The Department should be very careful not to establish precedents which may be ruinous to the Treasury. *Justice* demands that delays should not be encouraged. The diligent only are favored in law.

The reasoning in 9 Op., 204-5, is especially applicable, though, in the particular claim and class of claims now under consideration, I have no reason to doubt the entire honesty and good faith of all the claimants.

IV.—The former action of the accounting officers should not be opened up on this subject, as the reference now asked practically would do.

This claim has been so frequently under consideration that it may be proper to refer to the objections heretofore made to it.

1. It has been objected that the joint resolution of February 28, 1867, was repealed by act of July 12, 1870.

That objection is not well taken. There was no repeal. (20 Wall., 179.)

It would be dangerous to hold that a grant of "legislative power"

* The act of March 30, 1868, (15 Stats., 54, now Rev. Stats., 191,) was passed to reverse the ruling in 12 Op. Attorneys-General, 43; founded on 1 Op., 678; 2 Op., 303, 463, 625, 652, 786; 5 Op., 89, 636; 7 Op., 299; 8 Op., 299. (See *Winnissimmet Co. vs. U. S.*, 12 Ct. Cls., 322; *Lippitt vs. U. S.*, 14 Ct. Cls., 152.)

Secretary Chase recognized the conclusiveness of the decisions of the First Comptroller in a letter, as follows:

TREASURY DEPARTMENT,
Washington, D. C., Dec. 11, 1863.

SIR: The Auditor and Comptroller having concurred in opinion respecting the allowance and payment of your claim for salary, no appeal lies to the Secretary of the Treasury, who has no control over the action of the accounting officers in such a case.

I am, respectfully,

S. P. CHASE,
Secretary of the Treasury.

Hon. ANDREW WYLIE,
Judge Supreme Court of the District of Columbia, Washington, D. C.

carries the right to divest a vested right, or annihilate a right of action or a right of property. (Cooley, Const. Lim., 237, 275, 357.)

2. The act of June 14, 1878, (20 Stats., 13,) neither authorizes nor prohibits a re-examination of the claim. That act made it the duty of the accounting officers to consider the validity of claims under appropriations, the balances of which had been exhausted or carried to the surplus fund, but provided that no claim once rejected should be re-examined unless reopened in accordance with existing law.

The appropriation made by the joint resolution of February 28, 1867, was a "permanent specific appropriation," which could not be carried to the surplus fund, and hence has no application to this claim. (Act June 20, 1874, 18 Stats., 110.)

3. I do not find that the decision of the Secretary of the Treasury of April 20, 1877, has any application to this claim.

That was founded on the act of June 20, 1874, (18 Stats., 110, sec. 5,) and the act of June 14, 1878, (20 Stats., 130,) and it was held that its purpose—

"Was to confine the officers of the Government to the allowance and payment of [certain] liabilities within three fiscal years."

The reason was that the act declared that—

"The Secretary of the Treasury shall cause all unexpended balances of appropriations which shall have remained on the books of the Treasury for two fiscal years to be carried to the surplus fund and covered into the Treasury: *Provided*, That this provision shall not extend to permanent specific appropriations," &c.

But as this claim is made under a "permanent specific appropriation," the act of 1874 does not affect it, except to save the right to consider it, so far as not precluded from consideration for other reasons. It is immaterial now whether the *right* reasons have been given heretofore for rejecting the claim. It was rejected; that is, the accounting officers refused to allow it. And sufficient reasons existed to justify the rejection.

I have not put my opinion against the reference of this claim to the Court of Claims on the ground either (1) that there is no power to re-examine it in the Treasury Department, or (2) because there is no appropriation to pay it, or (3) because barred by any limitation statute.

The *first* question seems to be somewhat misunderstood.

All claims, as a general rule, against the United States are to be settled and adjusted by the accounting officers of the Treasury Department, (Rev. Stats., 236, 269, 277, &c.;) but claimants, in certain cases, may instead pursue their rights in the Court of Claims, (Rev. Stats., 1059;) and specified claims may be referred to the said court by heads of Departments. (Rev. Stats., 1063.)

I.—As to the power to re-examine (1) adjusted and (2) rejected claims :

1. When a claim is adjusted by the proper officers of the Treasury Department, and a balance finally *certified* as due, the determination is “final and conclusive,” and hence cannot, as a general rule, be re-examined in the Department. This is not a *rejected* claim. (Rev. Stats., 191, 270; construed, 12 Op., 43; *Winnisimmet Co. vs. U. S.*, 12 Ct. Cls., 326; *Lippitt vs. U. S.*, 14 Ct. Cls., 153; 15 Pet., 377; Wood’s case, this vol., *ante*, p. 9; act June 14, 1878, 20 Stats., 130. *Supreme Court*: 6 Wheat., 135; 9 Wheat., 651; 3 Pet., 12; 5 Pet., 292; 8 Pet., 375; 9 Pet., 319; 15 Pet., 400; *U. S. vs. Bank of Metropolis*, 10 How., 109; 13 How., 478; 1 Op., 598; 2 Op., 463, 515; 3 Op., 46, 148, 461, 521, 731; 4 Op., 79, 341, 378; 5 Op., 29, 123, 668–9; 6 Op., 576; 9 Op., 32, 101, 301, 387, 505; 10 Op., 56; 12 Op., 43, 357, 386–8, 505; 13 Op., 33, 226, 297, 387, 456.)

2. So, under the acts of June 16, 1874, and June 20, 1874, (18 Stats., 75, 110,) and June 14, 1878, (20 Stats., 130,) claims which had been “once examined and rejected” prior to the latter date, “under appropriations, the balances of which have been exhausted or carried to the surplus fund,” cannot be re-examined, “unless reopened in accordance with [then] existing law.”

There was, in fact no *statute* as to reopening, but the “existing law” was the *rule and usage* of the Department, having the effect of a regulation, (Rev. Stats., 161; *U. S. vs. Barrows*, 1 Abbott, U. S. R., 351,) that a rejected claim would not be reopened unless for error in calculation or the discovery of new evidence previously unknown, and which could not have been procured; adopting the principle as to new trials in the courts. (1 Graham & Waterman on New Trials, ch. XIII, p. 462; 3 *Id.*, ch. XII, p. 1016, &c.; Hilliard on New Trials, ch. XV, pp. 491, 516.)

This rule became law as to the class of cases to which it refers, by force of the manifest purpose of Congress in the acts referred to in the decision of April 20, 1877, of the Secretary, as to “accrued claims,” *quod vide*. (See authorities above, and 10 Op., 56.)

3. This rule has generally (though possibly not absolutely in all cases) acquired the force of a “*regulation*” as to *all* claims once examined and rejected. (Rev. Stats., 161; *U. S. vs. Barrows*, 1 Abbott, U. S. R., 351; *U. S. vs. McKee*, 1 Otto, 442; Wood’s case, this vol., *ante*, 9.)

II.—The power to examine claims when there is no appropriation for payment.

a. This claim is not, for reasons already stated, liable to the objection that there is no appropriation to pay it.

b. Claims founded on a statutory and fixed liability of the Government, as salaries, &c., may exist without an appropriation to pay; but they are claims, and may be properly, or as a matter of right, examined and certified by the proper officers of the Treasury. (Rev. Stats., 236, 269, 277, &c.; *Collins vs. U. S.*, 15 Ct. Cls., 22; Rev. Stats., 3732; 1 Ct. Cls., 381; 13 Ct. Cls., 303, 309; see *Butler vs. Bates*, 7 Cal., 136; *Hommerich vs. Hunter*, 14 La. Ann., 225; *Thomas vs. Owens*, 4 Md., 189.)

The time within which these and similar claims may be examined and certified will be considered hereafter.

2. As to unliquidated demands:

(1.) The statute requires money appropriated for a given purpose to be applied solely to that purpose, and prohibits expenditures in excess of appropriations. (Rev. Stats., 3679, 3680, 3732, 3733, 5503; act Aug. 15, 1876; 19 Stats., 169, sec. 5.)

(2.) Still there are contracts authorized for the necessities of the service even beyond appropriations. (Rev. Stats., 3732.)

This will sometimes happen under general or special laws.

These demands, being in pursuance of law, may properly be audited and certified, although there be no existing appropriation to pay them.

(3.) But if officers exceed their power in incurring liabilities, under such circumstances that claimants are not chargeable with notice thereof, as in the purchase of supplies beyond an appropriation, the duty of auditing or certifying claims presented after the limit of the appropriation had been reached might not be so clear.

If an authority to make purchases under an appropriation act be exceeded in violation of law, (Rev. Stats., 3679,) it may well be doubted if a claim arising on such excess would be a claim under an exhausted appropriation within the act of June 14, 1878. (20 Stats., 130.)

(4.) Claims may arise founded on statutes fixing specific amounts as salaries, &c., or on appropriations for given objects, (Rev. Stats., 3732,) or in the expenditure of contingent funds, under discretionary powers, to which the foregoing principles would apply.

III.—As to limitation statutes:

1. The act of June 14, 1878, expressly limits the power of Executive officers to examine for payment those claims which may be brought before them within five years from that date, arising "under appropriations, the balances of which have been exhausted or carried to the surplus fund."

So there may be other limitations, in terms or by implication.

2. By force of the act of June 20, 1874, (18 Stats., 110,) and the decision of the Secretary of the Treasury of April 20, 1877, claims,

generally, under appropriations can only be considered and certified for payment within three years from the date when the appropriations become available.

The act, however, excepts from its operation five classes of claims, which may be examined and certified at any time until payment would be *presumed* at common law.

These exceptions are—

“*First.* Permanent specific appropriations.

“*Second.* Appropriations for rivers and harbors, and various public buildings and improvements, which, from their nature, must be continuous, extending through several years.

“*Third.* The pay of the Navy and Marine Corps, as from the nature of the service, it must often be performed in distant seas, during cruises for three years.

“*Fourth.* Claims arising under certain sections of the treaty with Great Britain, of May 8, 1871.

“*Fifth.* Contracts existing June 20, 1874.”

It is to be observed in this connection that claims under “permanent annual appropriations” fall within the limitation of three years. Thus, the Secretary, in his decision of April 20, 1877, says:

“A specific appropriation is one where the amount, the object, or the person is designated particularly or in detail. It may be, and usually is, permanent in terms, because not limited as to time, like an annual appropriation; but there is a wide distinction between a permanent specific appropriation and a permanent annual appropriation.

“A permanent annual appropriation contemplates that a liability will accrue in the future, from time to time, and that when it accrues it may be paid from the Treasury, subject to the same general laws as to time, place, and manner that apply to other annual appropriations. Any other construction would permit the most dangerous abuses by allowing the payment from a permanent appropriation of a claim that in any court would be barred by lapse of time.

“The mere fact that an appropriation is, in form, a permanent appropriation, instead of the usual annual appropriation, should not give it greater force or take it out of the general rules as to appropriations. Such an appropriation, from the nature of it, may not in form be covered into the Treasury, but a claim ought not to be paid out of it at a different time nor be passed upon in a different mode than if it were payable out of a current annual appropriation. A claim for captured cotton, or for a mule, or horse, or steamboat lost in the public service, should have no preference over a claim for salary not presented in time. It is no hardship to refer such claims to the Court of Claims.

“To expand an exception in favor of a specific appropriation, so as to cover all permanent appropriations, would be to defeat the plain intent of the law. These permanent annual appropriations are contained in sections 3687, 3688, and 3689, Revised Statutes. They include, among others, the appropriation for the expenses of the collection of the revenue from customs, which is an appropriation in a permanent form of a fixed sum for the service of each fiscal year. * * * [Ashton's case, *post*, 167; Rev. Stats., 269, 305, 311, 3691, 3698, page 74, *post*.] They include,

also, a multitude of permanent indefinite appropriations declared to be permanent annual appropriations. An amount necessary for each year in the future, for certain purposes, is authorized to be taken from the Treasury, and these annual appropriations are subject to the same rules, limitations, and qualifications as the usual annual appropriations made by Congress. Any other construction of the act would defeat its object. Money would be taken from the permanent annual appropriation for horses and steamboats lost in the public service, and applied to pay for horses lost twenty years ago; money would be taken from the appropriation for collecting the customs, and used for the payment of claims that accrued twenty years ago, and for the interest thereon. Thus old claims would be paid out of permanent annual appropriations, and would be barred neither by lapse of time nor by adverse decisions, while current appropriations would be covered into the Treasury.

"The Secretary is of the opinion that this is not a fair construction of the law; but that the words 'permanent specific appropriation' should be confined to appropriations such as private bills, where nothing is left to executive officers for examination or inquiry except to identify the party, or to comply with some specific duty pointed out by the specific appropriation."

In an opinion of Hon. A. G. Porter, First Comptroller, May 6, 1880, on the claim of the State of Kansas to five per cent. of the net proceeds of sales of public lands in said State, in discussing the "*permanent annual appropriation*," made by section 3689, Revised Statutes, page 728, as to said five per cent., he said:

"Section 5 of the act approved June 20, 1874, (18 Stats., 110,) directs the Secretary of the Treasury to cause all unexpended balances of appropriations which shall have remained upon the books of the Treasury for two fiscal years to be carried to the surplus fund and covered into the Treasury. And the Secretary of the Treasury, on the 20th of April, 1877, decided that the appropriations contained in section 3689, Revised Statutes, came within the operation of this act.

"As the amount owing to the State was not ascertained to be due within two fiscal years since the claim accrued, the appropriation from which it would properly be payable has, therefore, been covered into the Treasury.

"The fourth section of the act approved June 14, 1878, makes it the duty of the several accounting officers of the Treasury to continue to receive, examine, and consider, the justice and validity of all claims under appropriations the balances of which have been exhausted or carried to the surplus fund that may be brought before them within a period of five years. And the Secretary of the Treasury is, by the act, directed to report the amount due each claimant, at the commencement of each session, to the Speaker of the House of Representatives, who shall lay the same before Congress for consideration."

The subject of appropriations is fully discussed in letters of the Secretary of the Treasury, of December 14, 1877, and April 20, 1877. (House Ex. Doc., No. 27, 2d sess. 45th Cong.)

The result is, that claims under either (1) annual or (2) permanent annual appropriations may be audited and paid at any time within

three years from the period when the appropriation became available. And under the act of June 14, 1878, (20 Stats., 130,) claims under (1) annual, and, it seems, also, under (2) permanent annual appropriations, not audited within such period of three years, may be audited for report to Congress "within a period of five years."

3. The usual *presumption of payment* arising from lapse of time has the force of law, and the Government is entitled to its benefit. (Reese case, 9 Op., 197.) It was by the Attorney-General forcibly said:

"When time testifies * * * it is heard with as much respect as any other witness would be."

As to liquidated demands evidenced by writing—*e. g.*, Government bonds, coupons, &c.—there is no other limitation. (Lippitt's case, 14 Ct. Cls., 152; Winnisimmet *vs.* U. S., 12 Ct. Cls., 322.) And as to these, an *acknowledgment*, as in the public debt statement, &c., may rebut the presumption.

The balances due for coupons on Government bonds, or interest on registered bonds, or for principal when due, including the 3.65 District of Columbia bonds, are the only demands on the Treasury which do not require to be audited or certified before payment. They are paid and carried into the Treasurer's settlement for the approval of the First Comptroller. (Rev. Stats., 269, 305, 311, 3691, 3698; Ashton's case, *post*, 167.)

They do not, as other claims, require a Treasury warrant under Rev. Stats., 248. Coupons and bonds have the force of warrants.

The original section (3691) of the Revised Statutes was supplied by section 5 of the act of June 20, 1874, (18 Stats., 110,) except the last clause, which provides that—

"No appropriation for the payment of the interest or principal of the public debt, or to which a longer duration is given by law, shall be thus treated."

That is, covered into the Treasury. This also carries with it an implication that *all other claims* under *annual* or *permanent annual* appropriations are *barred*, as herein stated, on the maxim, *expressum facit cessare tacitum*.

I have thus examined this claim in every view of it which seemed requisite, and have perhaps gone beyond this in some respects, because similar and other questions concerning claims of this character, and others somewhat of kindred nature, as to which it is important that principles be stated and understood, are constantly arising.

This claimant and the deserving class he represents are entitled not only to be heard, but to a full and careful investigation, which if prac-

licable, will satisfy them of the justice of the result that is reached by force of existing law and regulations. There is, of course, a right reserved to them to ask the judgment of Congress on their demands, and they may have claims to consideration even beyond any rights fixed by absolute law.

TREASURY DEPARTMENT,

First Comptroller's Office, August 25, 1880.

**IN THE MATTER OF UNCOLLECTED FEES OF CLERKS OF
COURTS—VISER'S CASE.**

1. In adjusting the accounts with the United States of clerks of the circuit and district courts, they are chargeable as well with fees *earned*, but not yet paid, as with those collected.
2. Under section 191 of the Revised Statutes the decision of a court, other than the Supreme Court, does not furnish a rule of action for the accounting officers of the Treasury Department, except as to the matter involved in an action, and in that only to the extent to which the judgment *directly* determines a right.
3. A *principle of law*, determined by the Supreme Court of the United States, affecting the legal *rights* of claimants before the accounting officers of the Treasury Department, should generally be followed by them.
4. The decisions of a First Comptroller of the Treasury, in cases decided by him should not, as a general rule, be opened up by his successor in office.

J. H. Viser was a clerk of the United States district court for the northern district of Mississippi, from the year 1866 to the year 1871. For all official services he was entitled to the fees prescribed for clerks of courts by act of Congress, approved February 26, 1853. (Rev. Stats., 828.) By section 3 of said act, all clerks of United States circuit and district courts are required to render to the Secretary of the Interior, on the first day of January and July in each year, a return in writing, embracing all the fees and emoluments of their offices, of every name and character, whether *received or payable*, and not yet collected; also embracing the necessary expenses of their offices. The personal compensation of each is limited to \$3,500 per year, to be retained, in addition to the office expenses, out of their fees and emoluments. And they are required to deposit to the credit of the Treasurer of the United States any surplus over the maximum which may be shown by the returns. (Rev. Stats., 833, 839, 844, 845.)

No surplus was shown by any of Mr. Viser's returns, except the returns for the years 1867 and 1868; and these were not completed by him and forwarded to the Secretary of the Interior until May, 1869. They were then referred to the Treasury Department for adjustment. On examination by the accounting officers it was found that the gross

earnings of the office, including fees not received in said years, amounted to	\$19,452 25
The office expenses to	\$6,097 15
The clerk's compensation to	7,000 00
	<hr/> 13,097 15
Showing a surplus of	<hr/> 6,355 10 <hr/>

The account was thereupon adjusted, and a balance of \$6,355 10 was stated by the First Auditor and certified by the Comptroller to be due to the United States.

The clerk was requested by the Comptroller, June 28, 1869, to deposit this balance to the credit of the United States, which he declined to do, on the ground that the fees which caused the balance had not been collected.

In 1872, the amount of three accounts for fees earned from the United States in the years 1869 and 1870 (\$989 15) was covered to the clerk's credit on account of surplus emoluments; and, subsequently, fees returned as earned from the United States in 1876 and 1877, amounting to \$1,127, (for which no accounts had been rendered,) were also credited. These credits reduced the balance due from him to \$4,238 95.

In August, 1876, suit for the balance due to the United States was commenced in the district court for the northern district of Mississippi, and at the December term, 1878, verdict and judgment were rendered in favor of the defendant. Upon receipt of the United States attorney's report of this fact, the Solicitor of the Treasury requested him to take the proper steps to have the case appealed. To this the attorney replied that the verdict was rendered upon instructions of the court; that the defendant was not liable for fees earned from individuals but not collected; and that it never occurred to him to make a motion for a new trial or to file exceptions to the rulings. The attorney was then instructed to have the case appealed to the circuit court. He replied that the district court for the northern district of Mississippi has the powers of a circuit court, and that all appeals therefrom must be taken to the Supreme Court.

As the penalty of the clerk's official bond was only \$2,000, the Solicitor of the Treasury did not think the case could be carried to the Supreme court.

In conformity to the decision of the district court, the amount of the balance against the clerk has been credited to him on the books of this Department, and his account is now closed.

Application for payment of the accounts for fees earned from the

United States in 1869 and 1870, amounting to \$989 15, which were carried to the clerk's credit on the emolument account, was, on behalf of the clerk, made to the Secretary of the Treasury in February, 1879, and was referred to this office. It was based on the opinion of the court that the clerk was not liable for fees earned, but *not collected*, from individuals, and upon the fact that if fees not collected had not been charged, a balance would not have been found due to the United States, and the fees earned from the United States would have been paid.

The late Comptroller, Mr. Porter, in an opinion, February 24, 1879, held that the decision of the court did not extend beyond the balance in controversy, and he declined to authorize the allowance claimed.

Application is again made to reopen the account of the clerk before the present Comptroller.

Hon. *Stanley Matthews*, of Ohio, for the claimant.

Mr. *Viser* filed a brief claiming that the statute distinguished between fees *received* and fees *payable*, (Rev. Stats., 833;) that the act of August 16, 1856, sec. 6, (11 Stats., 50,) giving a right to certain clerks to demand fees in advance, is a legislative construction of the law in favor of the clerk more effectual than the act of May 26, 1862, for the relief of Smith; that Rule 29, General Orders in Bankruptcy, Supreme Court of the United States, supports this view; that the practice has never been to collect costs as they accrue; that no act authorized such collection except that of 1856; that the act of June 27, 1864, (13 Stats., 196,) requiring deposit in money for certain courts, adopts this view. (4 Binney, 167; 16 How., 98; 1 Brightly's Dig., 279, note c.)

The district court, by rule, December term, 1866, adopted the Mississippi statute as to costs, and this statute provides that costs are not due until final determination of suits. (Rev. Code Miss., 150, art. 8.)

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DECISION BY WM. LAWRENCE, *First Comptroller*:

This application presents three principal questions:

First. Was the clerk chargeable in his account with the United States with fees earned but not collected?

Second. When the court decided that he was not so chargeable, was he thereby entitled to be paid the balance which would be due him, on the theory that the court decided correctly?

Third. Can the settlement made at the Treasury Department, since the decision of the court, be now reopened?

It is well to decide all these, even though the decision of one might dispose of the application.

First. The real question on the *merits* is, whether the clerk is properly chargeable with fees earned but not collected.

It is clear that he is so chargeable:

1. This is settled by usage.

Contemporaneous and continued construction of a statute in due time settles the law, on the maxims, *Contemporanea expositio est fortissima in lege: Optima legum interpret consuetudo*: and, *Communis error facit jus*. (Stuart *vs.* Laird, 1 Cranch, 299; Dwarris, 562; Sedgwick, 213; Broom's Leg. Max., 132.)

Ever since the enactment of the law requiring the rendition of emolument returns, it has been the practice of the accounting officers to charge the clerks with fees payable as well as fees paid by individuals.

2. It has been so held by successive Attorneys-General. (7 Op., 610; 8 Op., 36; 11 Op., 455.)

3. This is clearly the fair construction of the language of the Revised Statutes, secs. 833, 839, 840, 841, 844, 845.

4. This cannot be changed by a rule of the district court. That court has power to adopt rules, and may, by rule, to a certain extent, adopt State statutes regulating practice, but "not inconsistent with any law of the United States." (Rev. Stats., 914, 918, &c.)

5. The Government rightly withheld payment from Mr. Viser. This is justified by the Revised Statutes, 1766, and by the act of March 3, 1875, (18 Stats., 481.) These provisions give sufficient authority to make up accounts in accordance therewith.

Second. The next inquiry is, how far the accounting officers of the Treasury Department should give effect to the *principle* decided by the court.

All claims *by* or *against* the United States are to be adjusted in the Department, and the *balances* duly certified are *conclusive*, and only subject to revision by Congress or the *proper courts*. (Rev. Stats., 191, 236.)

A claimant who is dissatisfied with the amount certified, or whose claim is rejected, may, (1) in certain cases, sue in the Court of Claims; and (2) certain claims may be referred by heads of Departments; and (3) where the balance is due the United States, suit may be brought against the debtor to recover it; besides which, (4) Congress can always pay any demand, or relieve a person certified as a debtor from liability.

These are the *four* modes of adjusting claims, *some* of which (but whether all need not now be considered) can be resorted to even after a balance is certified. When an officer is sued he can make any defence

the court will permit; and whether the court gives him more or less than the law authorizes, the Treasury Department is in law bound, to the extent which he is relieved from liability in the particular case by a final judgment, to give him the benefit of it. If it be the judgment of a court of last resort, as the Supreme Court, the *principle of law* settled by the court should be generally regarded as conclusive; and if it entitles the party sued to a credit with the Government beyond the direct effect of the judgment, he will be entitled to it. The authority of the Supreme Court of the United States should be respected, and on questions of the *rights* of parties should be conclusive. (5 Op., 84.)

But courts of inferior jurisdiction cannot control the action of executive officers in passing on claims beyond the direct effect of judgments they may render. (*Ante*, 16, 17; 12 Op., 386; 5 McL., 9; 5 How., 139; 5 Paige, 80; 15 Pet., 141, 377; 16 Pet., 18.)

Third. The remaining inquiry is, can the ruling of my predecessor of February 24, 1879, be now reopened? Certainly, upon the principles stated in the matter of the claim of the Metropolitan Police force, (*ante*, 57,) it should now be regarded as final. (2 Op., 8; 5 Op., 664; 10 Op., 56; 12 Op., 355; 13 Op., 387, 456; 15 Pet., 377.)

The decision of the Supreme Court, furnishing a rule of law different from that previously adopted by the Executive Department, might, perhaps, furnish a sufficient reason for opening an account previously settled. (5 Op., 84; 10 Op., 56; 12 Op., 355.)

In any view, the application for restatement of the account is denied.

TREASURY DEPARTMENT,

First Comptroller's Office, September 1, 1880.

IN THE MATTER OF PAYMENTS TO CHARITABLE CORPORATIONS—PROVIDENCE HOSPITAL CASE.

1. The Surgeon-General of the United States Army having made an authorized contract for the Government with Providence Hospital to pay it a monthly sum for the support of transient paupers, the hospital is not thereby required to give bond as a disbursing agent.
2. Generally, a statute authorizing an officer *merely* to contract for supplies will not necessarily authorize him to certify vouchers showing the supplies to be furnished.
3. An appropriation act which authorizes the Surgeon-General to contract for the support of paupers carries with it, in view of the usage which has prevailed, an implied authority to certify to services rendered under it, and his certificate is *prime facie* sufficient.

4. The act of June 23, 1874, (18 Stats., 216,) does not apply to institutions making contracts for the support of paupers in consideration of monthly payments to be made after the services rendered.
5. Form of contract between the Government and Providence Hospital to bind each, without imposing personal liability on the agents making the contract, considered.
6. Where a contract is made by "Joseph K. Barnes, as Surgeon-General of the United States Army, and Sister Beatrice, as Superior of the Providence Hospital, a duly incorporated charity," and it is presented in support of a voucher for services by the hospital, it will be *presumed* that the Surgeon-General had sufficient evidence of her authority to make the contract for the hospital.
7. But it will not in such case be presumed that she is the fiscal officer of the hospital authorized to collect money due to it.
8. Under such contract, the account for services, warrant, and draft for payment should be *to the hospital*—not to officers by name. Then the proper officer, with evidence of authority, can collect dues from the United States and endorse drafts.
9. When the Government is indebted to a *corporation*, warrants and drafts for payment should run in favor of the *corporation*, and not in the name of officers even as such, who are liable to change and be supplied by others.

The institution commonly known as "Providence Hospital," in Washington City, is a corporation authorized by act of Congress, of April 8, 1864, (13 Stats., 43,) for charitable purposes, "under the name and style of the directors of Providence Hospital."

The "sundry civil appropriation act" of June 16, 1880, appropriates—

"For care, support, and medical treatment of seventy-five transient paupers, medical and surgical patients, in the city of Washington, under a contract to be made with such institution as the Surgeon-General of the Army may select, fifteen thousand dollars."

By virtue of this clause a contract was made as follows:

"This agreement, made this first day of July, in the year one thousand eight hundred and eighty, between Brigadier-General Joseph K. Barnes, as Surgeon-General of the United States Army, and Sister Beatrice, as Superior of the Providence Hospital, a duly incorporated charity in the city of Washington, in the District of Columbia, witnesseth:

"That whereas the Surgeon-General is authorized by an act of Congress, approved June 16, 1880, to contract for the care, support, and medical treatment of seventy-five transient paupers, medical and surgical patients, in the city of Washington:

"The said Sister Beatrice, on behalf of the said Providence Hospital, agrees to keep in readiness at all times, for one year from the date hereof, seventy-five beds, and to receive all patients who may be lawfully sent to the said hospital by the Surgeon-General, under authority of the aforesaid act, to the number of seventy-five; and furnish subsistence and all necessary care, nursing, and medical and surgical treatment to the satisfaction of the Surgeon-General, so long as the same may be necessary.

"And the Surgeon-General agrees, on behalf of the United States, to pay for the said services at the rate of twelve hundred and fifty dollars per month.

"This contract may be terminated by either of the parties to it, by giving to the other thirty days' notice in writing.

"JOS. K. BARNES,

"*Surgeon-General, U. S. Army.*

"SISTER BEATRICE,

"*Sup. of Prov. Hospital.*

"Signed and sealed in the presence of—

"WM. J. NELSON."

An account was made charging the United States as debtor "*To Sister Beatrice, Superior of Providence Hospital,*" for care, &c., of transient paupers during July, under said contract, \$1,250; on which the Surgeon-General certified "that the above account is correct and just, and that the services have been rendered."

The First Auditor, on August 2, 1880, transmitted to the First Comptroller, for his decision thereon, a certificate that the Auditor had "examined and adjusted" (Rev. Stats., 236, 277) an account between the United States and Sister Beatrice, Superior of the Hospital, and found due \$1,250, with a voucher, being the account certified by the Surgeon-General. These are submitted to the First Comptroller to determine whether a warrant shall issue for the payment of the claim, and, if so, to whom?

DECISION BY WILLIAM LAWRENCE, *First Comptroller* :

I have considered the questions suggested and arising on the papers transmitted to me.

1. There is no law requiring Providence Hospital or Sister Beatrice, as its agent, to give any bond in connection with the duties assumed for the Government. Under the clause of the appropriation act, by virtue of which the contract of July 1, 1880, was made, it would have been competent for the Surgeon-General to require surety for the faithful performance of the contract. (*Jackson vs. Brown*, 5 Wend., N. Y., 590.) But the well-known responsibility of the hospital and of the agents managing it rendered this unnecessary.

Each disbursing officer of the Government is required to give a bond; but neither the hospital nor any of its agents is such, nor in any way charged with any duty requiring a bond. (Rev. Stats., 176; *Matter of Appropriations, &c., ante*, 27.)

The hospital is in the same position as any other contractor who furnishes supplies or renders services in pursuance of law for an agreed price.

2. The appropriation made by act of June 16, 1880, is, by reason of its terms and by force of the contract made under it, to be applied in making payments at the expiration of each month for services rendered by the hospital during such month, and on vouchers furnished by it. The usage has been in similar cases to accept such vouchers as this. In view of this usage, vouchers duly certified by the Surgeon-General are *prima facie* sufficient. (Den *vs.* Den, 6 Cal., 81; 26 Vt., 503; 18 Johns., 407; 7 How., 89; 14 Wallace, 1.) Undoubtedly the First Comptroller might go back of these, to ascertain if they ought to have been given; but the official position and high character of the Surgeon-General, as well as that of Sister Beatrice, preclude the necessity of any such inquiry. (Rev. Stats., 236; 14 Op., 419.)

The law requires the accounting officers to be satisfied of the justness of accounts. When the act of June 16, 1880, charged the Surgeon-General with the duty to make a contract, and made no other provision as to the supervision of its execution, it may fairly be presumed, in view of the usage in similar cases, that Congress intended such officer to look to the execution.

When a power is given by statute, everything necessary for making it effectual is given by implication. *Quando lex aliquid concedit, concedere videtur et id per quod devenitur ad aliud.* (When the law grants anything, it also grants that by which the the thing is attained. Coke, 2d Inst., 326; 5 Co., 47; 12 Co., 130, 131; Hob., 234; 3 Kent, Comm., 421; 15 Barb., N. Y., 153, 160.)

It is a rule that, when the provisions of a statute are general, everything which is necessary to make such provisions effectual is supplied by the common law. (Co. Lit., 235; Co. 2d Inst., 222; Bac. Abr. Stat., B.)

Appropriations are made for "contingent expenses" in the Departments, and some of these appropriations regulate the mode of expenditure and of certifying vouchers. (Rev. Stats., 235, 240.) But as to other contingent funds, when no law specifically directs the mode of expenditure, and of certifying vouchers, the usage has been to certify them by the proper officer charged directly by the law, or under authorized "regulation," with the disbursement.

Usage has great force in construing a law, because Congress legislates in view of usage, which becomes part of the law. (Sedgwick, Stats., 215-218.) *Optima legum interpretis consuetudo. A communi observantia non est recedendum. Communis error facit jus.* (2 Eden, ch. 61-74; 1 Burrows, 445; 2 Brod. & B., 598; 1 Abb. Ad. R., 436; 15 Gratt., 457; 16 N. H., 247; 3 Barb. C., 577; LeRoy *vs.* Beard, 8 How., 468; 5 D. & E., 564; Story, Agency, 73; White *vs.* V. and M. R., 21 How., 577.)

The power to certify vouchers is an incidental or implied power, and so treated. (Rev. Stats., 60, 76, 172–193, 209, 262, 1001, 1747, 3680–3683, 4781.)

A statute which *merely* empowers an officer to contract for supplies does not, in the absence of usage or other circumstances showing such to be the purpose of Congress, necessarily authorize him to certify vouchers. But the powers necessary to execute a law must often be implied. (6 Op., 226; 14 Op., 419; *Allen vs. Blunt*, 3 Story, 742; *LeRoy vs. Beard*, 8 How., 468; Works of Alexander Hamilton, vol. 1, 138–154; *Morgan vs. Mason*, 20 Ohio, 408; 6 Ohio St., 495; 14 Ohio St., 18; Co. Lit., 152 *a* 1; Broom, Leg. Max., 434.)

The officer cannot certify to the *expenditure* or *payment* of the money. This must be evidenced by proper receipt. And the powers of officers are not generally to be enlarged by implication, but only in case of manifest necessity, and when such may be fairly deemed the purpose of Congress. (6 Op., 386.)

3. The act of June 23, 1874, (18 Stats., 216,) has no application to the appropriation now under consideration, nor to the hospital in its relations thereto. It relates to institutions for the use, support, or benefit of which appropriations are made *to be expended by them*, and not to appropriations expended under contracts like that with Providence Hospital.

The act only applies when the institution is to *expend* the fund appropriated, and not when it is used to pay for services previously rendered, as in this case. The decision “In the Matter of Appropriations,” &c., (*ante*, 25,) does not go beyond this.

4. (1.) The contract in this case may not be in the best form. (*Hunter vs. Field*, 20 Ohio, 340.) But it is sufficient; and the intention apparent to impose a duty on the hospital on one side, and the United States on the other, and not a personal obligation on Sister Beatrice or Joseph K. Barnes. (*Sheets vs. Selden*, 2 Wall., 177; 11 How., 374; 1 Cr., 345; 2 Cr., O. C., 109; 5 Cr., C. C., 520; Story on Agency, sec. 306; *Cottrell vs. Thorne*, 3 Caines’ R., 71, note; *Prosen vs. Allen*, Gow’s R., 117; *Macbeath vs. Haldimand*, 1 D. & E., 172, 180, 181; *Gill vs. Brown*, 12 Johns., 385; *Belknap vs. Reinhart*, per Marcy, J., 2 Wendell, 375; *Brown vs. Rundlett*, 15 N. H. Rep., 360; *Lee vs. Munroe*, 7 Cranch, 366; *Armstrong vs. U. S.*, Gilpin R., 399; 2 Kent’s Commentaries, 633; 2 Op., 918; *Benson’s case*, 7 Op., p. 88, Cushing, 1855.)

(2.) It will be presumed that the Surgeon-General had satisfactory evidence that Sister Beatrice had authority to make the contract on

behalf of the hospital. This results from the usual presumption that officers have properly performed their duties.

(3.) But it does not *necessarily* follow that she is "the proper fiscal officer" of the hospital, authorized to receive and receipt for moneys due to it. The warrant for payment should be in favor of Providence Hospital by its exact corporate name—"Directors of Providence Hospital"—and the draft in payment thereof should be to it, and endorsed by the proper fiscal officer authorized to receive the money. (Rev. Stats., 191, 236, 268, 269, 276, &c.; *ante*, 15, 25, 28.)

On this subject, the Circular No. 25, October 22, 1878, of the Treasurer of the United States, approved by the First Comptroller and Secretary of the Treasury, may be properly quoted, as follows:

"Evidence of authority to endorse for incorporated or unincorporated companies must accompany drafts drawn or endorsed to the order of such companies or associations. Such evidence should be in the form of an extract from the by-laws or records of the company or association, showing the authority of the officer to endorse, receive moneys, &c., for the company, and giving his name and the date of his election or appointment, which extract should be certified to by the secretary or president of the company, and its seal be affixed, and the certificate should state that such authority remains unrevoked and unchanged. If the company has no seal, the extract should be certified as correct by a notary public or other competent officer, under his seal."

The monthly payment in this case is not due to Beatrice personally, but is due to the corporation. The act of June 16, 1880, does not authorize a contract to be made with an individual person, but with "an *institution*." Beatrice might die after a draft issues, and be succeeded by another Sister Superior, in which event evidence would be required of the facts before a draft could be paid. The corporation is the real legal person in whom is vested the right to payment, and the draft should accordingly be to the corporation. Officers change—the corporation is perpetual. I have thus stated these views to show the relation of the hospital and its officers to the Government, and the propriety of what is now required.

Providence Hospital is one of the humane charities which originated in Christian benevolence, and, in the care of pious and devoted sisters and agents, it is relieving distress and misfortune, and deserves the kindest and most liberal consideration.

The Auditor's certificate is returned to him for correction, that a warrant may issue in due form for payment.

TREASURY DEPARTMENT,

First Comptroller's Office, September 2, 1880.

IN THE MATTER OF INTEREST ON BOARD OF AUDIT CERTIFICATES—RICHEY'S CASE.

1. It is a rule in the construction of statutes that they are to be read in the light of surrounding circumstances.
2. The holders of Board of Audit certificates, issued under the act of June 20, 1874, (18 Stats., 116,) are not entitled to interest thereon, at six per centum per annum, from their date to the date of the act of June 16, 1880, nor for any period, for the purpose of being converted into 3.65 per cent. bonds of the District of Columbia under said act.
3. Words in a statute may be treated as surplusage when necessary to carry out its plainly-expressed intent or purpose, ascertainable by recognized rules of construction.
4. Where a new right is given by statute, and the mode of satisfying such right is specifically defined therein, parties interested are confined to the statutory redress thereby given.
5. The maxim *noscitur a sociis* applies to the expression, "with the interest accrued," in the 9th section of the act of June 16, 1880, and fixes its rate at 3.65 per centum, payable semi-annually, that being the only rate with which the act was dealing.
6. The particular word (*e. g.*, "*redeem*") may be construed to have different meanings even in different parts of the same act, when such purpose is made clear by the authorized rules of construction. And by the same rules of construction it may be ascertained to have a meaning different from its usual popular or legal sense.
7. In the act of June 16, 1880, the word "*redeem*" means to *exchange*.
8. When a given construction of ambiguous words in a statute would produce an unreasonable result, or work inequality among those entitled to *equal* consideration by the Government, such construction is to be avoided, if the words employed will fairly admit of it on recognized principles of construction.
9. The true construction of an ambiguous statute may sometimes be deduced from what is denominated "the equity of the statute," but this is only to be resorted to with extreme caution.
10. Under the act of June 16, 1880, parties who reduce their claims to judgment, and ask 3.65 District bonds in payment, are entitled to receive bonds, the principal sum of which shall equal the principal sum of the *CLAIMS on the day when due and payable*, and not a principal sum which shall equal a *judgment*, including six per cent. interest thereon.
11. The District of Columbia, as organized into a government by the act of February 21, 1871, (16 Stats., 419,) is not liable, *by force of the general interest statute of April 22, 1870, (16 Stats., 91; District Laws, 85-98,)* to pay interest on Board of Audit certificates.
12. The general rule is, that interest statutes do not apply to the Government of the United States, nor of a State or Territory, nor to a *quasi* political corporation in matters affecting their respective interests, unless they be expressly named, or included by necessary implication.

13. Over-due bonds or coupons of a city draw interest. Whether this be by *implied contract* or *usage* as a part of the contract, or by force of general interest statutes—*quære?*
14. Whether in such case the rate of interest is that of the *statute* or of the *contract*—*quære?*
15. The opinion of the Attorney-General of October 17, 1874, as to interest, considered.
16. A State is *not* liable to pay interest as individuals are, as per maxims and principles well settled.
17. As between individuals, interest is not allowed at common law, but only by (1) *statute*; (2) contract, express or implied; (3) *usage*, which may constitute an implied contract; and (4) in torts, in the discretion of the jury.

Congress passed "An act to provide a government for the District of Columbia," approved February 21, 1871, (16 Stats., 419,) by which the Territory of the District of Columbia was "created into a government by the name of the District of Columbia," by which name it was "constituted a body corporate for municipal purposes," with power to "contract and be contracted with, sue and be sued," &c.; and with a delegate in the House of Representatives of Congress, substantially as under the Territorial governments. The executive power over the District was vested in a Governor to be appointed by the President with the consent of the Senate.

The act provided "that legislative power and authority in said District shall be vested in a Legislative Assembly," the members of which were to be elected by the voters of the District, and with general powers of legislation over all rightful subjects, with certain exceptions; all laws to be subject to modification or repeal by Congress; with power to provide by appropriations for making the public improvements which created the debts hereafter mentioned, and others, and for levying taxes for their payment.

The act provided for a Board of Public Works, composed of the Governor and four other persons, to be appointed by the President with the consent of the Senate, who were given control of the streets and avenues, alleys and sewers of the city, and the other works intrusted to them by the Legislative Assembly or Congress; and they were required to disburse, on their warrants, money appropriated *by the* United States, or collected by the *District* from property-holders on such improvements, but could make no contracts except in pursuance of appropriation, nor until the appropriation was made. Under this act and certain amendments, the debts in question were contracted.

On the 20th of June, 1874, Congress passed the act (18 Stats., 116) abolishing the executive of the District, the Legislative Assembly, the Board of Public Works, and the delegate to Congress; and creating a

commission of three persons to exercise the powers theretofore vested in the Governor and Board of Public Works of the District.

This act, (sec. 6,) made it the duty of the First Comptroller of the Treasury and Second Comptroller, as a *Board of Audit*, to examine and audit for settlement all the unfunded or floating debt of the District and Board of Public Works, named in the section, including seven classes:

First. Debts covered by sewer certificates; *second*, debts covered by certificates of the Auditor of the Board of Public Works; *third*, debts covered by the certificates of the Auditor and Comptroller of the District; *fourth*, debts existing, or hereafter created, on which no evidence of indebtedness was issued, arising out of contracts *oral or written*, made by the Board of Public Works; *fifth*, debts not covered by any evidence of indebtedness, arising out of contracts, *oral or written*, made on behalf of the District; *sixth*, debts for property taken by the Board of Public Works, from avenues, streets, &c.; and *seventh*, unadjusted claims for damages presented to the Board of Public Works, under the act of the Legislature of June 20, 1872.

This section made it the duty of the *Board of Audit* to "issue a *certificate* to each claimant, signed by the Board of Audit, countersigned by the Comptroller of the District, stating the amount found to be due to each and on what account."

The act made it the duty of the District sinking-fund commissioners (who were not abolished by the act) to cause *bonds of the District of Columbia* to be prepared, in denominations of fifty and five hundred dollars, bearing date August 1, 1874, payable fifty years after date, exempt from all taxation, bearing interest at the rate of 3.65 per cent. per annum, payable semi-annually.

This section declares—

"And the faith of the United States is hereby pledged that the United States will, *by proper proportional appropriations* as contemplated by this act, and by causing to be levied upon the property in the District such taxes as will provide the revenue necessary to pay the interest on the said bonds, as the same may become due and payable, and create a sinking-fund for the payment of the principal thereof at maturity.

"And the sinking-fund commissioners are hereby authorized to *exchange the said bonds at par for like sums of any class of the indebtedness in the preceding section of this act named*, including sewer-taxes or assessments paid, evidenced by the certificates of the auditing board provided for in this act."

Under the provisions of this act the Board of Audit issued a large amount of certificates to the various claimants, in form following:

"No. ——. §——.

"DISTRICT OF COLUMBIA,

"Washington, August 1, 1874.

"This certifies that upon examination and audit of claim No. ———, class No. ———, there is found to be due to John Smith, the sum of

one thousand dollars and ——— cents, being on account of contract work.

“Issued by the Board of Audit, constituted by an act of Congress, entitled ‘An act for the government of the District of Columbia, and for other purposes,’ approved June 20, 1874.

“R. W. TAYLER, *First Comptroller, U. S. Treasury,*

“JNO. M. BRODHEAD, *Second Comptroller, U. S. Treasury,*
“*Board of Audit.*

“Countersigned and registered by—

“FITZHUGH COYLE,

“*Dep. Comptroller, District of Columbia.*”

On the 14th of March, 1876, Congress passed a joint resolution, (19 Stats., 211,) providing that no further issue of 3.65 bonds under said act of June 20, 1874, should be made; directing discontinuance of all work which was agreed to be paid for in 3.65 bonds; repealing so much of the sixth section of said act of June 20, 1874, as required the First and Second Comptrollers to adjust the unfunded debt of the District and issue certificates; repealing the joint resolution which continued the existence of the Board of Audit of December 21, 1874; and prohibiting the increase of the present indebtedness of the District, making it a criminal offence for any officer to participate in the increase of the debt.

The officers charged, under the act of June 20, 1874, with redeeming the certificates under said section seven by issuing 3.65 bonds, suspended the redemption February 2, 1876. After such repeal, (March 14, 1876,) all redemptions of certificates in 3.65 bonds ceased.

A portion of the floating debt of the District, authorized to be funded under the said act of June 20, 1874, was never acted upon by the said Board of Audit.

On the 11th of August, 1874, the Attorney-General delivered an opinion (14 Op., 445) that the sinking-fund commissioners had no authority, under the act of June 20, 1874, to make the principal or interest of the 3.65 bonds payable in coin, and that their duty was discharged by making either payable in dollars, without qualification.

On the 17th of October, 1874, the Attorney-General gave an opinion (14 Op., 465) to the Secretary of the Treasury that, by the provisions of the said act of June 20, 1874, the Board of Audit was “authorized to allow interest at the rate of 6 per cent. per annum upon that part of the indebtedness of the District which purports to be evidenced and ascertained by certificates of the *Auditor of the Board of Public Works* of the said District.”

The Board of Audit did include interest on the face of these certificates at 6 per cent. from the time when claims accrued as due and payable to the date of certificates of indebtedness.

The Commissioners of the District, in their fourth annual report, embracing the period from November 30, 1876, to November 1, 1877, say:

“Under the 6th section of said act, approved June 20, 1874, and the joint resolution of Congress, approved December 21, 1874, the Board of Audit examined, allowed, and issued certificates for claims, amounting, in aggregate, to.....	\$14,501,476 15
“Of the certificates thus issued there were converted into 3.65 bonds, guaranteed by the United States, as authorized by the 7th section of said act, approved June 20, 1874.....	13,743,250 00
“Leaving outstanding certificates of the Board of Audit, not converted into 3.65 bonds at the time of the passage of the joint resolution of Congress, approved March 14, 1876, (19 Stats., 211,) prohibiting the further issue of said bonds.....	758,226 15

“Of the certificates thus outstanding, \$663,637 88 had been delivered to the claimants by the Board of Audit, and the remainder of said certificates (\$94,588 27) were turned over to the Commissioners of the District by that board, together with their papers and records, as required by the joint resolution of Congress abolishing said board, and are now in the custody of the Auditor and Comptroller of the District, except certificates amounting to \$717 15, which have since been delivered to the claimant by the Commissioners of the District, in compliance with a *mandamus* issued out of the supreme court of the District of Columbia, and to them directed, commanding the delivery of the said certificates to the claimant.

“The Board of Audit also allowed claims, in class 4, relating to contracts with the Board of Public Works, for which certificates were not issued by them, amounting to \$133,829 26.

“In addition to this amount, there are claims in this class for work done, the measurements of which have been made and certified by the engineer of the District, but were not transmitted by him to the Board of Audit, comprising all work completed to date of cancellation of contracts, pursuant to the joint resolution of Congress approved March 14, 1876, \$143,186 62.”

On the 20th of January, 1879, and the 25th of February, 1879, the Commissioners of the District of Columbia communicated to the District Committee of the Senate letters which, amongst other things, show the following:

“That the then unfunded debt of this District was as follows:	
Certificates of Board of Audit not converted into 3.65 bonds	\$758,125 15
Sewer-bonds outstanding.....	87,350 00
Certificates of auditor of Board of Public Works.....	15,160 00
Accounts examined by Board of Audit, but for which no certificates were issued; also engineer's estimates—together	320,728 60
Other claims presented but not settled.....	5,840 77
Making unfunded total	1,187,204 52”

The forementioned letters show that of this sum of \$1,187,204 52 only \$272,056 87 grew out of extensions, by the Commissioners of the District of Columbia, of contracts for which it was agreed to receive 3.65 bonds. All the residue of the \$1,187,204 52 grew out of cash contracts.

When the Board of Public Works, by virtue of the act of February 21, 1871, (16 Stats., 419,) made contracts for public works, the contractors were *entitled to payment in money*. Contractors were furnished with a certificate from the auditor of the board showing amounts due them. (Act Legislative Assembly, May 9, 1873; act Congress, June 20, 1874—18 Stats., 120, sec. 8.) Auditor's certificates of indebtedness, largely in excess of appropriations, were outstanding June 20, 1874, when the act of Congress of that date (18 Stats., 120) authorized payment in 3.65 bonds for work *previously done, and thereafter to be performed* under existing contracts, &c.

But for the joint resolution of March 14, 1876, (19 Stats., 211,) suspending the issue of bonds, the present outstanding certificates doubtless would have been converted into bonds.

The Board of Audit gave 6 per cent. interest on all matured debts to August 1, 1874, which date all bonds bore, as required by section 7, act of June 20, 1874—with interest at 3.65 per cent. thereafter.

The Board of Audit certificates were made under the act of June 20, 1874, (18 Stats., 116,) and all bear date either August 1, 1874, or since, and up to January, 1876. They were given to compensate for work done both before and after June 20, 1874; but all those received by contractors were by them *accepted under the act of June 20, 1874, to be paid in 3.65 bonds*, if the holders so elected; otherwise, reserving a right to sue the District or pursue any authorized remedy.

The act of June 11, 1878, (20 Stats., 104,) providing a permanent form of government for the District of Columbia, requires the Commissioners of the District to make estimates for all expenses of the District, including the payment of interest, to be submitted to the Secretary of the Treasury, and by him laid before Congress; and then it provides—

“To the extent to which Congress shall approve of said estimates, Congress shall appropriate the amount of fifty per centum thereof; and the remaining fifty per centum of such approved estimates shall be levied and assessed upon the taxable property and privileges in said District, other than the property of the United States and of the District of Columbia.”

And see act of March 3, 1879, (20 Stats., 410.)

On the 16th of June, 1880, Congress passed an act entitled—

“An act to provide for the settlement of all outstanding claims

against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes."

The first section of this act gives the Court of Claims—

"Original, legal, and equitable jurisdiction of all claims now existing against the District of Columbia, arising out of contracts made by the late Board of Public Works, and extensions thereof made by the Commissioners of the District of Columbia, and such claims as have arisen out of contracts made by the District Commissioners since the passage of the act of June 20, 1874; and of all claims for work done under the order or by the direction of such Commissioners, and accepted for the benefit of the District, prior to the 14th of March, 1876; and of all certificates of the auditor of said Board of Public Works; and of all certificates issued by the Auditor and Comptroller of the District of Columbia; and all claims based on contracts made by the levy court; and of all sewer-certificates and sewer-taxes not heretofore converted into 3.65 bonds; all measurements made by the engineers of the said District, of work done under contracts made since February 1, 1871, for which no certificates have been issued or received by the contractor or his assignee; all claims based upon contracts made by the Board of Public Works, for which no evidence of indebtedness has been issued."

It requires the suits to be commenced within six months after the passage of the act.

The 5th section provides for appeals from the Court of Claims to the Supreme Court, and provides for the payment, in the method prescribed in section 6, of all judgments of the Court of Claims or Supreme Court.

Section 6 makes it the duty of the Secretary of the Treasury to demand from the sinking-fund commissioner of the District—

"So many of the 3.65 bonds, authorized by the act of Congress, approved June 20, 1874, and the acts amendatory thereof, as may be necessary for the payment of the said judgments; and said sinking-fund commissioner is directed to issue and deliver to the Secretary of the Treasury the amount of 3.65 bonds required to satisfy the judgments; *which bonds shall be received by the said claimants at par in payment of said judgments, and shall bear date first of August, 1874, and mature at the same time as other bonds of this issue: Provided, That,* before the delivery of such bonds as are issued in payment of judgments rendered as aforesaid on the claims aforesaid, the coupons shall be detached therefrom from the date of the said bonds to the day upon which such claims were due and payable."

This section limits the gross amount of bonds theretofore and thereafter to be issued to fifteen millions of dollars, and provides that the bonds shall be no more binding on the United States than those issued under the act of June 20, 1874.

The ninth section is in these words:

"That the Treasurer of the United States, as *ex officio* sinking-fund

commissioner of the District of Columbia, is hereby authorized and directed to redeem the outstanding certificates of the late Board of Audit, created by the act approved June 20, 1874, *with the interest accrued on said certificates*, by issuing and delivering to the owners or holders of such certificates, bonds of the District of Columbia, as provided in section seven of the act approved June 20, 1874, entitled "An act for the government of the District of Columbia, and for other purposes," and acts amendatory thereof; said bonds to bear the *same date, same rate of interest*, and interest and principal be payable at same time, and subject to all the conditions, pledges of faith, and exemptions as the bonds authorized to be issued by the said seventh section of said act, and shall be signed by the said Treasurer, as *ex-officio* sinking-fund commissioner of the District of Columbia, and numbered, countersigned, sealed and registered as the said seventh section of said act prescribes, detaching all coupons from said bonds up to the date of such certificates."

August 10, 1880, an application was made to the Secretary of the Treasury, on behalf of holders of certificates of the late Board of Audit, asking him to refer to the Attorney-General, for his opinion, the question whether the *face value of the bonds to be* issued in redemption of certificates "shall equal the face of the aggregate of the certificates redeemed by the bonds, plus the interest accrued, at 6 per cent., upon them up to the date of the redemption, or at least up to the date of act of June 16, 1880."

August 12, 1880, the Secretary of the Treasury referred this application to the First Comptroller "for his view of the law."

Hon. *Samuel Shellabarger* and Hon. *Jeremiah M. Wilson* for holders of certificates:

The question presented is, whether the bonds to be issued in redeeming the Board of Audit certificates shall include interest on the certificate from the time it was due up to the date of the act of June 16, 1880, or whether, on the other hand, the bond shall only equal the face of the certificate redeemed, without interest.

I.—The statute giving interest supports the claim made.

1. The act of Congress of 22d of April, 1870, (16 Stats., 91; District Laws, 85,) being *broad, general, and unlimited* in its terms, enacting that "any things in action shall continue" to bear 6 per cent. interest, covers the obligations of such municipal corporations as the District of Columbia. (1 Dillon, Municipal Corporations, sec. 414, and cases cited in notes 1 and 2.)

2. If, in any State, it is doubtful whether such words as those above stated in the *general interest act of 1870* would include the matured debts of such corporations as the District of Columbia, still the Treasury Department is bound to hold said act of 1870 to apply to the debts of this

District, because such is the holding of the Supreme Court. (*Aurora City vs. West*, 7 Wall., 82–105; *Gelpick vs. Dubuque*, 1 Wall., 175–206.)

3. The District of Columbia, under the act of 1871, creating the District government, possessed the ordinary powers and was subject to the ordinary obligations and liabilities of like municipal corporations. (*Barnes vs. District of Columbia*, 1 Otto, 540.)

4. The Attorney-General, in his opinion of the 17th of October, 1874, (14 Op., 465,) discusses, supports by authorities, and decides both the proposition that the District of Columbia was liable for interest at 6 per cent. on its matured debts, (the contract not otherwise providing,) like other municipal corporations; and also that it was the duty of the Board of Audit to allow interest upon the claims which it audited under the act of June 20, 1874.

This is supposed to be the law of the Treasury Department, so long as it stands unreversed by countervailing decisions of the Supreme Court.

5. Even if it were otherwise doubtful, whether the debts of the District of Columbia, in the absence of contracts to the contrary, would bear 6 per cent. interest from their maturity, that doubt would be removed as to the present matter by the 9th section of the act of June 16, 1880, which expressly requires the Treasurer of the United States to deal with the certificates of the Board of Audit as things in action on which interest *did* accrue. Where an act of Congress, indirectly and by inference even, requires the allowance of interest, it must be allowed, even if against the Government. (*United States vs. McKee*, 1 Otto, 442.)

Thus certificate-holders claim to establish that the debts of the District of Columbia, like other debts matured, bear 6 per cent. interest from maturity, under the operation of the general statute law of the District of the 22d of April, 1870.

SECTION 9 REQUIRES ACCRUED INTEREST TO BE REDEEMED BY BEING INSERTED AS A PART OF THE PRINCIPAL OF THE 3.65 BONDS.

II.—The certificate-holders rely upon the following:

1. The settled, law sense of the statutory word employed in section 9, "*redeem*," means a "purchase back by one under legal obligations, of his obligation." The word always, and by necessity, means a purchase back and satisfaction of the cancelled or outstanding obligation so "redeemed" by payment or satisfaction of the *entire* outstanding obligation. "Redemption," as understood in law, can *never* be accomplished except by full payment or satisfaction of such redeemed obligations.

2. When a statute directs an obligation to be redeemed or (which is the same thing) paid, that is a command that the *entire* obligation, and not merely a *part* of it, shall be paid.

3. That the Board of Audit certificates, to be redeemed under the section, do bear interest is established, not only by the considerations and authorities above cited, but also by the practice and decisions of the Supreme Court of this District, which has, in the judgments it has rendered, in every instance allowed interest on the Board of Audit certificates.

4. The express words of the statute, in section 9, declare and direct that "*the accrued interest*" shall be redeemed as well as the face of the certificate. *Both* are mentioned; and the redemption of interest is as explicitly *commanded* as that of the principal. Hence the redemption of the face of the certificate, without redeeming the "accrued interest," would be to disregard, and strike out of the statute, one of its most unmistakable and peremptory terms.

5. Even if giving a bond, dated the 1st of August, 1874, with coupons "detached therefrom from the date of the said bonds to the day upon which such claims were due and payable," could be deemed a redemption of accrued interest on the certificate, to the extent of 3.65 per cent. of such interest, yet *that* would be a redemption of *but little over half* of the accrued interest; and would be to disregard the express letter of the statute commanding *all* accrued interest, to wit, 6 per cent. accrued interest, to be redeemed.

6. If the Treasurer, in redeeming these certificates under section 9, should detach (with the consent of the creditor) coupons, as required by the last clause of section 9, "up to the date of such certificate," *and further, up to the date of the redemption*, and insert, on the face of the bond, the interest accrued up to the date of redemption at *six per cent.*, he will have satisfied the requirement of the last clause of the section as to detaching coupons "up to the date of such certificate," he will have redeemed the accrued interest, will have done justice to the creditor, and complied with all parts of section 9.

7. The construction of section 9, which certificate-holders resist, is forbidden by the fact that it repudiates or *leaves unredeemed nearly one-half of the accrued interest on the certificates, which is due and owing*, according to law, as much as the principal of the certificate is. It will thus repudiate just legal obligations recognized as recoverable in the courts, and will put the creditors of the District in the position of being without remedy, because the government under which they contracted their debts, which *had power to levy taxes to pay these debts in full*,

is abolished; and it puts in the place of that government a Congress proposing to levy taxes for the payment of only a *part* of the recognized debts of the District. This is not only unjust, and virtual repudiation, but is forbidden by the letter of the statute commanding the redemption of all the interest, and by the most settled principles of statutory construction. (7 Wall., 486.)

8. No other construction than the one which certificate-holders contend for will put the holders of Board of Audit certificates, who were provided for in section 9, *on an equality with* the creditors provided for in sections 1 and 6 of the *same* act. Section 1 of this act suffers the creditors to recover, on all the claims enumerated in that section, six per cent., up to the time of the recovery of judgment. (See this, shown above.) Then, section 6 makes these judgments payable at par, principal and interest, in 3.65 bonds, which bonds bear 3.65 per cent. interest; and these coupons are detached up to the time when the claim became payable, which means up to the date of the judgment.

It *cannot* mean up to the time when the claim sued upon first became payable, because the coupons became payable *before the date which the statute compels the bonds to have, to wit, the first of August, 1874*; hence coupons could not be detached up to a date before the date of the bond.

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

A portion of the outstanding Board of Audit certificates represents liability incurred under contracts to pay *money*, and a portion represents liabilities which, by the terms of the contracts under which they were created, were to be paid in 3.65 District of Columbia bonds. All of the certificates, however, were accepted by the holders under the act of June 20, 1874, (18 Stats., 120,) which directs the sinking-fund commissioners "to *exchange* said bonds at *par* for like sums of" said certificates. Up to the 14th March, 1876, certificates to the amount of \$13,743,250 had been converted into 3.65 bonds, when the right to convert was taken away, leaving outstanding certificates unconverted to the amount, as estimated, of \$758,226 15. Though, under a ruling of the Attorney-General, creditors were allowed 6 per cent. interest from the time when claims became due until Board of Audit certificates were issued, yet these, so far as redeemed, were redeemed in 3.65 District bonds bearing the even date therewith; so that no creditor received any interest on the certificates except the 3.65 per cent. on the District bonds taken in payment thereof. When Congress passed the act of June 16, 1880, authorizing the Board of Audit certificates to be redeemed in bonds, the latter were worth in the market "96 cents bid—97 asked," although prior certificates were

paid in bonds at par, when they only sold in the market at about 73 cents on the dollar, or less.

The 9th section of the act of June 16, 1880, is like a contract or a will, to be read in the light of these and other facts and circumstances herein-above stated. (Hildebrand *vs.* Fogle, 20 Ohio, 147; Keith *vs.* Quinney, 1 Oregon, 364; Zanesville Canal *vs.* Zanesville, 20 Ohio, 487; Wigram on Wills, *passim*; Broom's Leg. Max., 300; Glenn *vs.* U. S., 4 Nott. & H., 510; 2 *Id.*, 520-528; 3 *Id.*, 212, 219, 397; 5 *Id.*, 453-486.)

The object of all interpretation and construction should be to ascertain, by the authorized means, the intention of the law-making power. If the claimants are entitled to the interest they ask, their right must be founded either (1) on the act of June 16, 1880, or (2) on the general interest statute, or (3) on some rule of common law.

I.—*It is evident that Congress did not, in the act of June 16, 1880, intend that the holders of Board of Audit certificates should receive interest thereon at 6 per cent. from their date to that of the act of June 16, 1880, nor for any period.*

1. *The language of the act so determines.*

a. The act does say that the Treasurer is "directed to redeem" the certificates "with the interest accrued on said certificates." If this stood alone, it might give some countenance to the claim which is made; but the act immediately proceeds to define in exact terms *how* the certificates are to be *redeemed*, and *what* shall be regarded as a redemption of the certificates "with the interest accrued," by saying that all this shall be done "by issuing and delivering to the owners or holders of such certificates, bonds of the District of Columbia as provided in section seven of the act approved June twentieth, eighteen hundred and seventy-four, entitled 'An act for the government of the District of Columbia, and for other purposes,' and acts amendatory thereof, said bonds to bear the same date, same rate of interest, and interest and principal be payable at same time, and subject to all the conditions, pledges of faith, and exemptions as the bonds authorized to be issued by the said seventh section of said act, and shall be signed by the said Treasurer as ex-officio sinking-fund commissioner of the District of Columbia, and numbered, and countersigned, sealed and registered as the said seventh section of said act prescribes, detaching all coupons from said bonds *up to the date of such certificates.*"

b. Undoubtedly the words "with the interest accrued" are surplusage, but "words may be treated as surplusage when necessary to carry out the intent." (U. S. *vs.* Stern, 5 Blatchf., C. C., 512.)

It is apparent that "the interest accrued" refers to 3.65 per cent.,

which holders of certificates will secure by bonds with coupons running back to cover the period since the date of the certificates, and *this* accrued interest is "redeemed" by issuing the coupons to cover it.

c. This construction of the act of June 16, 1880, is required by the rule that where a *new right* is given by statute, as in this case, and the mode of satisfying the right is specifically defined in the act, "parties [interested] are confined to the statutory redress." (See, especially, *State vs. Marlow*, 15 Ohio St., 114, per LAWRENCE *arguendo*; *Sedgwick*, Stats., 76; *Smith vs. Lockwood*, 13 Barb., 209; *Dudley vs. Mayhew*, 3 Comst., 9; *Boston vs. Shaw*, 1 Metc., 130; *Crosby vs. Bennett*, 7 Metc., 17.)

d. This principle is supported, also, by maxims of construction: *Expressio unius est exclusio alterius: Expressum facit cessare tacitum*. (Broom, Leg. Max., 581.)

e. It might be sufficient to say that the claim of 6 per cent. cannot be allowed, because the act of June 16, 1880, makes no allusion to *that rate*, nor to the general interest statute in connection therewith, or as applicable thereto. It is not asking too much to require that, before 6 per cent. can be allowed, there must be some words to justify it.

The statute *deals only with a rate of interest at 3.65 per cent.*; and when it refers to "the interest accrued," it contemplates *that rate* on the maxims, *Noscitur a sociis: Copulatio verborum indicat acceptationem in eodem sensu: Quæ non valent singula, juncta juvant: Ex antecedentibus et consequentibus fit optima interpretatio*. (Broom, Leg. Max., 577, 588; 3 Bulstr., 132; 1 Vent., 225; 3 T. R., 87; 4 T. R., 227; 1 B. & C., 644, (8 E. C. L. R.); 13 East, 531; 10 Exch., 496, 515; s. c., 11 Exch., 113; 18 C. B., 162; s. c., *Id.*, 893, (86 E. C. L. R.); 2 Bing., 391, (9 E. C. L. R.); 5 M. & S., 465; 5 B. & Ald., 161; 5 B. & C., 519; 1 Jarman, Wills, 2d ed., 596; *State vs. McGarey*, 21 Wis., 496.)

The word "*redeem*" generally, in law, signifies "to receive back by *paying* the obligation, as any promissory note," &c. Generally it means to pay in money. The meaning, however, differs according to the sense in which it is used in acts of Congress.

Thus the act of March 3, 1863, (12 Stats., 345; Rev. Stats., 3574, 3579, 3580,) as to fractional currency, treats the word "*redeem*" as having the effect to pay and cancel, or it would have been unnecessary to provide for a *reissue*. Under the resumption act of January 14, 1875, (18 Stats., 296,) "to *redeem*" fractional currency was held to mean to pay and cancel, while to "redeem" legal-tender notes (greenbacks) left them uncanceled, and with a right to reissue, because this was the *intention* apparent on the act. This subject was a fruitful source of discussion in Congress and elsewhere.

In the act of June 16, 1880, the word "*redeem*" means to pay and

cancel, by *exchanging* 3.65 District bonds for Board of Audit certificates; and as to "the interest accrued on said certificates," it is to be redeemed in the same manner—that is, by 3.65 bonds, the principal of which is to pay the principal of the certificates, and the coupons for interest on the bonds is to redeem the "interest accrued." Principal redeems principal—coupons for interest redeem interest.

2. This construction is necessary, to avoid absurd consequences.

a. Where a particular construction of ambiguous words would produce a result absurd or unreasonable in itself, it is to be avoided, if the words employed will fairly admit of it. (*In re* Day, 9 Blatch., C. C., 385; Broom's Leg. Max., 175; Doe *vs.* Norton, 11 M. & W., 928; Turner *vs.* Sheffield, 10 M. & W., 424; 4 H. L. Cas., 152; Jersey *vs.* Davison, 5 Dutch., 415; Domat's Rule, 2; Lieber's Leg. and Pol. Hermeneutics, XVII, 10.)

b. If 6 per cent. interest be allowed as claimed, then the holders of certificates will (1) secure that rate from the date of the certificates (they were due at date, and dated prior to January, 1876,) to June 16, 1880; (2) *for the same time* will get 3.65 per cent. interest, making in all 9.65 per cent. interest; and (3) will secure bonds, including the interest, "inserted as a part of the principal."

It is impossible to believe that Congress intended to pay 9.65 per cent. interest from January, 1876, to June 16, 1880, when the Government has paid no such interest since January, 1861, and was, in June, 1880, and is now, able to borrow money at 3.50 per cent., and District 3.65 bonds then were and are worth very nearly par.

The District of Columbia never paid any such interest.

c. It is impossible to execute the law on any such principle as that claimed, because the bonds are "to bear the same date, [August 1, 1874,] same rate of interest" as the former bonds, "detaching all coupons from said [new] bonds up to the date of such certificates."

Here is no authority for converting interest into *new principal*, but the exact reverse.

d. It is said in argument that—

"If the Treasurer, in redeeming these certificates, * * * should detach * * * coupons as required by the last clause of section 9, 'up to the date of such certificates,' AND FURTHER, UP TO THE DATE OF THE REDEMPTION, and insert, on the face of the bond, the interest accrued up to the date of redemption at six per cent., he will have * * * done justice to the creditor."

If he would do this, he would do precisely what the law does not say he may do. It is asked that, to do justice on the theory proposed, the Treasurer shall detach coupons, not only, as section 9 says, "up to the

date of the certificate," but "*further*, [further than the law permits,] up to the date of *redemption*."

This does, indeed, suggest a mode of relieving the claim of one of the absurd results which it would entail; but the surpassing ability of learned counsel cannot relieve the result they ask from the flat contradiction of the statute which it requires, nor from the *reductio ad absurdum* to which it leads.

3. The statute was designed to place the holders of outstanding certificates exactly on the same footing with those who had received bonds prior to the joint resolution of March 14, 1876. (19 Stats., 211.)

It relieved them of the discrimination against "their previous condition." It simply restored the rights which existed prior to the suspending of the issue of bonds.

a. This must be apparent from its language and the attendant circumstances. The new bonds, as the statute says, shall "bear the same date, same rate of interest, and interest and principal be payable at same time, and subject to all the conditions, pledges of faith, and exemptions" as the prior bonds.

b. It has been said that "equality is equity," and "equity delights in equality;" and the true construction of a statute clothed in ambiguous terms, is frequently found in *its equity*, though, as a sole means of arriving at the intention, this should be employed with extreme care. (Sedgwick, Stats., 83, 251, 308; Story's Eq., sec. 753; Puffendorf's Elem. Jur., Univ. Lib., 1 def. XIII, sec. 22; Coke's Inst., 24 *b*; Bacon's Abr. Stat., 1; Farrell *vs.* Dart, 26 Conn., 376; Hoguet *vs.* Wallace; 4 Dutch., 523; Monson *vs.* Chester, 22 Pick., 385; 3 B. & Ald., 266; 4 G. & J., 152; 8 Md., 456; 3 Cow., 96; 15 J. R., 380.)

c. There is no reason why the *present* holders of certificates should receive the interest they ask, when none of the holders prior to March 14, 1876, received other interest than the 3.65 per cent. from the date of their Board of Audit certificates. Undoubtedly, the delay to which the present holders of certificates were subjected might have operated as a hardship, but Congress deemed this necessary for the protection of the public for reasons which the investigations by committees of Congress and debates in that body sufficiently show; and, as a matter of fact, those who received bonds on or prior to March 14, 1876, took them when their selling value was 73½ cents bid on the dollar, or less, while the present holders of certificates found them on June 16, 1880, and since, with a selling value of "96 bid—97 asked."

d. It is claimed that this construction gives the holders of certificates who sue under sections *one* and *six* of the act of June 16, 1880, an ad-

vantage, in this, that they will recover 6 per cent. interest to the date of judgment.

To this there are *three* answers:

(1.) This *assumes* that the court would allow 6 per cent. interest. This will be considered hereafter.

(2.) It *assumes* that, if a judgment be rendered including such interest, the creditor can have 3.65 bonds for a *principal sum* sufficient to cover the whole judgment.

a. That a creditor will have a right to ask an appropriation to pay any judgment rendered is certain.

b. But if he elects to take bonds in payment, he will get just what the act of June 16, 1880, gives him, and it does *not* give him any such amount as claimed.

Section 1 gives a right to sue in the Court of Claims—to meet really disputed claims.

Section 6 provides that—

“The Secretary of the Treasury is hereby authorized to demand of the sinking-fund commissioner of the District of Columbia so many of the three-sixty-five bonds authorized by act of Congress approved June twentieth, eighteen hundred and seventy-four, and acts amendatory thereof, as may be necessary for the payment of the judgments; and said sinking-fund commissioner is hereby directed to issue and deliver to the Secretary of the Treasury the amount of three-sixty-five bonds required to satisfy the judgments; *which bonds shall be received by said claimants at par* in payment of such judgments, and *shall bear date August first, eighteen hundred and seventy-four, and mature at the same time as other bonds of this issue: Provided, That before the delivery of such bonds as are issued in payment of judgments rendered as aforesaid on the claims aforesaid, the coupons shall be detached therefrom from the date of said bonds to the day upon which such claims were due and payable;* and the gross amount of such bonds heretofore and hereafter issued shall not exceed in the aggregate fifteen millions of dollars.”

It is unnecessary to repeat what is elsewhere herein said, and which shows that the purpose of Congress was to give claimants whose claims were rejected, or not admitted in full, or otherwise in doubt, or requiring liquidation, a means of determining their amount. When so determined, they are to receive 3.65 bonds, the *principal sum of which* shall equal the principal sum of the “*claims*” on the day when “*such claims*” (not judgments) “were due and payable.” This section distinguishes *twice* between “*claims*” when “due and payable,” and *judgments*. And this is an additional persuasive argument to show that Congress did not in *any case* contemplate the allowance of 6 per cent., or regard the District as within the general interest statute.

It is to be observed that, if suit were brought on an auditor's certificate for a claim “due and payable” before the date of the 3.65 bonds,

(August 1, 1874,) it is not intended to say what, if any, interest should be computed from the date of the claim or Auditor's certificate to the date of the bonds, August 1, 1874. But as the bonds are to bear date August 1, 1874, all claims then due could receive only the coupon or 3.65 per cent. interest with the bonds.

d. Besides this, holders of certificates are not compelled to accept bonds. They may sue the District of Columbia as a municipal corporation, (act February 21, 1871, 16 Stats., 419, sec. 1; act June 20, 1874, 18 Stats., 117, sec. 2,) and obtain judgment, when it is fair to presume that provision will be made for their payment; or even without suit, if the holders of certificates decline to accept bonds. These bonds may be much more desirable than money, exempt as they are from National, State, and all other taxation, and constituting, as they do, a desirable investment, constantly growing in value.

4. The construction now given is supported by the fact that a portion of the certificates was given under contracts expressly payable in 3.65 bonds.

a. It is unreasonable to suppose that Congress would *do more* than contracts required, which would be the case if certificates are paid as contracts require, in 3.65 bonds, with a bounty of 6 per cent. added for a considerable period, (1) when no creditor asked for a law to do this; (2) when no such purpose was ever indicated in any report or discussion in Congress; and (3) when the words of the statute do not necessarily require any such construction.

b. Some of the certificates represent liabilities originally designed to be paid in money, but there had been no expectation of such payment for some time prior to their issue. But if this were not so, they are, by the act of June 16, 1880, put on the same footing with certificates issued under contracts specifically payable in 3.65 bonds.

5. In view of all this, even IF the interest statute of April 22, 1870, is to be deemed *generally* applicable to *debts of the District of Columbia*, yet the act of June 16, 1880, *excludes it* from any application to the Board of Audit certificates now under consideration.

II.—There is much *reason* and *authority* for holding that the District of Columbia, as organized into a government by act of February 21, 1871, (16 Stats., 419; Dist. Laws, 2,) *is not liable* to pay interest by force of the general interest statute of April 22, 1870. (16 Stats., 91; Dist. Laws, 85–98, sec. 713, &c., 829.) That statute is as follows:

“AN ACT to amend the usury laws of the District of Columbia.

“*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the rate of interest upon

judgments or decrees, and upon the *loan* or *forbearance* of any *money*, *goods*, or *things in action*, shall continue to be six dollars upon one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time, except as hereinafter provided.

"SEC. 2. That in all contracts hereafter to be made it shall be lawful for the parties to stipulate or agree in writing that the rate of ten per cent. per annum, or any less sum of interest shall be taken and paid upon every one hundred dollars of money loaned, or in any manner due and owing from any person or corporation in this District.

"SEC. 3. That if any *person* or *corporation* in this District shall contract to receive a greater rate of interest than ten per cent. upon any contract in writing, or six per cent. upon any verbal contract, such *person* or *corporation* shall forfeit the whole of said interest so contracted to be received, and shall be entitled only to receive the principal sum due to such person or corporation.

"SEC. 4. That if any *person* or *corporation* within the District of Columbia shall directly or indirectly take or receive any greater amount of interest than is provided for in this act, upon any contract or agreement whatever, it shall be lawful for the person, or his personal representative, or the corporation paying the same, to sue for and recover all the interest paid upon any such contract or agreement from the person or his personal representative; or from the corporation receiving such unlawful interest: *Provided*, That the suit to recover back such interest shall be brought within one year after such unlawful interest shall have been paid or taken.

"SEC. 5. That nothing in this act contained shall be construed to change the general laws in force in relation to banking associations organized under the act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, approved June three, eighteen hundred and sixty-four.

"Approved April 22, 1870."

It may well be urged that this statute does not apply to the District government.

1. *Its language* is inapplicable.

a. It refers to "*person*," evidently meaning *natural person*; otherwise, it would be unnecessary to follow it by the contradistinctive word "*corporation*."

b. Its use of the word "*corporation*" evidently has no reference to the *District government*, but only to ordinary private corporations "*in this District*." It is inapplicable, in any proper sense, to the government *over all*, and not "*in*," the District. (16 Stats., 419.)

c. The interest statute gives interest on the *loan* or *forbearance* of money, goods, or things in action. The District government could only borrow money by force of *express law*, (act of February 21, 1871, 16 Stats., 422, sec. 5,) and *this* would determine the extent of the liability and interest.

The act under which improvements were first made contemplated payment by appropriations, and not by bonds on interest.

The statute gives interest for the *forbearance* of money; this contemplates *an agreement for time*. There has been no such agreement here, and no authority to make any such.

2. This view results from the *rule of construction* applicable to *Governments*.

a. It is claimed in argument that the statute must apply to the District government, if, in its language, "it is doubtful" whether it includes the government. The rule is exactly the other way. The statute shall not so apply unless the government be included in *express terms* or *by necessary inference*; and the rule of strict construction prevails. All this was determined in Stephani's case, (*ante*, this vol., 34.)

Sedgwick says:

"The general rule in the construction of statutes declaring or affecting rights and interests is, not to interpret them so as to embrace the sovereign power of the State, unless that idea be distinctly expressed, or result by necessary implication." (S. on Stats., 337; *Josselyn vs. Stone et al.*, 28 Miss., 753; 1 Black. Com., 261; Com. Dig., tit. Parliament, R. 8; *The King vs. Allen*, 15 East, 333; *The King vs. Inhabitants of Cumberland*, 6 Term R., 194; *United States vs. Hoar*, 2 Mason's R., 314; *Commonwealth vs. Baldwin*, 1 Watts' Penn. R., 54; *People vs. Rossiter*, 4 Caven, 143; *United States vs. Hewes*, U. S. D. C. for Pennsylvania, July, 1840; 1 Kent's Com., 460; 1 Pet., 589; *Domat's Rules*; *State vs. Kinne*, 41 N. H., 238; *Martin vs. State*, 24 Tex., 61; *Green vs. U. S.*, 9 Wall., 655.)

b. This rule follows in *principle* the maxim, *nullum tempus occurrit regi*, under which a statute of limitations does not apply to the United States or to a State, "unless there has been an express provision" to that effect. (*Angell's Lim.*, 34-41; 6 Peters, 666.)

c. It follows the maxim of English law that "the King can do no wrong," which is recognized as law applicable to our Government, and means that a wrong cannot be imputed to it. It is by force of this principle that the Government is not liable for the torts of its officers. (6 Op., 617; 7 Op., 229; *Gibbons vs. U. S.*, 8 Wall., 269; House Rep., No. 262, 1 Sess. 43d Cong., 46, note 91.)

If we now break down the rule that general interest statutes do not apply to the Government, and hold them so applicable, all the maxims above referred to necessarily fall with it, and the attributes of sovereignty, so essential to public safety, will be swept away.

d. It may be said that the District government was a mere municipal corporation, and not entitled to the position of a *State* on this subject.

This deserves consideration.

(1.) The act of Congress constituted it "a body corporate for municipal purposes." (16 Stats., 419.)

But it was much more than this. The Constitution gives Congress exclusive legislative power "in all cases whatsoever over such District." (Art 1, sec. 8; 5 Wheat., 324; 12 Pet., 619.)

The act of February 21, 1871, created a Governor, a Legislature, and a Board of Public Works, and gave to the District a Delegate in Congress. It created a GOVERNMENT with attributes of sovereignty equal to the Territorial governments of the United States, with more of population, wealth, and greater interests, if not greater power, than any of them.

It was contemplated in the statute that it should, to a certain extent, constitute a mere DEPUTY GOVERNMENT—the representative of National power.

It was provided that the *United States* should be *interested in* and **LIABLE, IN PART, FOR ITS OBLIGATIONS**; and that liability was subsequently fixed at one-half.

Whatever law affected the District government, and especially laws as to interest, affected the Government of the United States.

That *such a government*, having such relations to the United States, is subject to ordinary statutes of limitation, and to general interest statutes, seems to me against *all principle*.

The *government of a Territory* of the United States, and such a government as the District of Columbia had under the act of 1871, stand in principle on the same footing with the government of a State, so far as the statute of limitation and interest statutes are concerned.

(2.) There are cases which hold that general interest statutes do not apply even to city corporations and similar bodies. (Perkins *vs.* Reynolds, 31 Ill., 529; Chicago *vs.* People, 56 Ill., 327; People *vs.* Tazewell Co., 22 Ill., 147; Johnson *vs.* Stark Co., 24 Ill., 75; Madison Co. *vs.* Bartlett, 1 Scam., Ill., 67; Barnes *vs.* Dist. Col., 91 U. S., 1 Otto, 543.)

But this is elsewhere denied. (1 Dillon on Munic. Corp., sec. 414; Langdon *vs.* Castleton, 30 Vt., 285; Robbins *vs.* County Court, 3 Mo., 57; Rogers *vs.* Lee County, 1 Dillon, C. C. R., 529; R. R. Co. *vs.* Evansville, 15 Ind., 395; Hollingsworth *vs.* Detroit, 3 McLean, 472; Pruyn *vs.* Milwaukee, 18 Wis., 367; Quincy *vs.* Warfield, 25 Ill., 357; Mercer *vs.* Wallace, 1 Wall., 83; Meyer *vs.* Muscatine, *Id.*, 384; Gelpcke *vs.* Dubuque, 1 Wall., 206; White *vs.* The V. and M. R. R., 21 How., 575; Commissioners *vs.* Aspinwall, 21 How., 539; Aurora City *vs.* West, 7 Wall., 82, 105.)

The case in 1 Wallace, 206, puts the right to interest on over-due coupons of a city, not on the ground that the general interest statute applies to a city, but on the doctrine that it was due "by universal com-

mercial usage and consent." The *ground* of the liability is important, because the *general statutory rate of interest* and the *contract rate* of bonds may be different; and it would *seem* that in such case the *implied contract* is, that the contract rate continues on past-due coupons.

The true ground of liability is, *implied contract*, which would, of course, arise from usage. (Robinson *vs.* Bland, 2 Bur., 1086; 2 Bro., C. C., 3, Colton *vs.* Bragg; see "implied contract," *post*, 108.)

It may be conceded that for *many purposes* the District government was an ordinary municipality, and so liable. (Barnes *vs.* Dist. Col., 1 Otto, 552.)

(3.) But so far as it was an "auxiliary" of the National Government—the mere representative of Congress—a DEPUTY nationality, acting in a matter involving the *liability of the United States*, as in the creation of a debt to be paid in part from the National Treasury, the District government was generally entitled to the benefit of the *maxims* applicable to a sovereignty.

This is the settled rule as to *quasi corporations*, such as counties, in the absence of contract or special statute affixing liability. (Barnes *vs.* Dist. Col., 1 Otto, 552; Des Moines *vs.* Harker, 34 Iowa, 84.)

In 1 Potter on Corporations, 454, sec. 374, it is said:

"A *municipal* corporation, such as the corporation of a city, possesses two kinds of power—one governmental and public, and, to the extent to which they are held and exercised, it is clothed with *sovereignty*; the other is *private*, and, to the extent to which they are held and exercised, is *legal* and *individual*.

"The former are given and used for public purposes; the latter for private purposes. While in the exercise of the former, the corporation is a *municipal government*, and while in the exercise of the latter, is a corporate legal individual. (Lloyd *vs.* The Mayor of N. Y., 32 N. Y., 374, and cases cited.)

"When that line [of difference between the two kinds of powers] is ascertained, it is not difficult to determine the rights of parties; for the *rules of law are clear and explicit* which establish the *rights, immunities* and liabilities of the corporation when in the exercise of each class of powers. If, in the exercise of their private or ministerial powers and duties, they are guilty of negligence, they are liable the same as an individual for all special damages in consequence."

The inference is, that, when a municipal government is exercising the *high powers* of State or National authority, it is clothed with the *immunities* of the State or the Nation. This follows the maxim, *qui facit per alium facit per se*.

What difference can it make, in principle or in results, whether Congress, by law, creates a debt to be paid in part from the National Treasury, or intrusts the power to a deputy government to reach the same result?

(4.) *a.* The Attorney-General, (Williams,) on the 17th of October, 1874, decided that the "Board of Audit, under the act of June 20, 1874, (18 Stats., 116,) are, *by the provisions of that act*, authorized to allow interest at the rate of 6 per centum per annum upon that part of the indebtedness of the District of Columbia which purports 'to be evidenced and ascertained by certificates of the auditor of the Board of Public Works' of said District." (14 Op., 465.)

He does not say interest accrued *by force of the general interest statute*.

I have the highest respect for this and all other opinions of the Attorneys-General; and if it were not for this opinion, I might have doubted whether such interest could be allowed.

This opinion, however, does *not* apply to *Board of Audit certificates*, and the act of June 20, 1874, does not give interest on these. This has not been claimed.

b. The Attorney-General does say that "the State is liable to pay interest as individuals are." He cites authorities which give countenance to this view. (Resp. *vs.* Mitchell, 2 Dallas, 101; Commissioners *vs.* Kempshall, 26 Wend., 404; People *vs.* Canal Commissioners, 5 Denio, 401; 2 Mason's C. C. R., 1; and see *ante*, this vol., p. 35.)

But, it seems to me, these cases are not now recognized as law on this point. They are against all principle as at present recognized.

And so far as the case of Thorndyke *vs.* U. S., 2 Mason, 1, cited by the Attorney-General, is concerned, the right to interest was on Treasury notes, and rested on *usage*, if not express contract, as in 1 Wallace, 206. °

There is not a State in the Union, probably, where accounting officers allow interest against the State on all claims, as between individuals.

It has been again and again declared that the United States is not within general interest statutes, nor liable to pay interest as individuals are.

Mr. Cushing (Attorney-General) said, on the 20th September, 1855, (7 Op., 523:)

"Nothing is better settled, as a general rule, in the practice of the Government, than the disallowance of interest on claims against it, whether such claims originate in contract or in tort, and arise in the ordinary business of administration, or on private acts of relief, passed on special application to Congress."

(See also Opinions Attorneys-General: 1819, April 3, vol. 1, 268; 1822, June 11, vol. 1, 550; 1822, July 20, vol. 1, 554; 1825, June 6, vol. 1, 723; 1826, May 17, vol. 2, 28; 1831, September 10, vol. 2, 463—"if it shall appear that interest is justly due;" 1837, Nov. 23, vol. 3, 294—denied, or materially qualified, by Opinion April 2, 1842; 1841, June 17, vol. 3,

635; 1842, April 2, vol. 4, 14; 1842, December 20, vol. 4, 136; 1843, December 9, vol. 4, 286; 1849, February 16, vol. 5, 49, 72; 1849, May 30, vol. 5, 105; 1849, July 20, vol. 5, 138; 1850, February 2, vol. 5, 227; 1851, April 16, vol. 5, 334; 1851, October 8, vol. 5, 399; 1854, June 9, vol. 6, 533; 1855, August 25, vol. 7, 439; 1855, September 20, vol. 7, 523; vol. 9, 59; vol. 14, 30.)

There are numerous statutes allowing interest, because none was allowed at common law. (1 Stats. at Large, 85, 677; 5 S. at L., 518, 651; 6 S. at L., 924, 931; 9 S. at L., 206; Res. March 3, 1847; Jefferson's letter to Mr. Hammond, 1792, State Papers, 1, 304; Letter of Mr. Guthrie, Secretary of the Treasury, MS., 1855, April 14, to Second Auditor Treasury, rules contrary to Opinion of February 16, 1849, 49, vol. 5, which was assumed to carry interest; Sedgwick on Damages, 373, 377; *Id.*, ch. XV; *Steward vs. Watson*, 5 Dana, 54; *Creuz vs. Hunter*, 2 Vesey, sec. 157; *Robinson vs. Bland*, 2 Bur., 1077, 1085; *Wood vs. Robbins*, 11 Mass., 504; *Whitney vs. State*, 52 Miss., 732.)

For cases in which interest was allowed on Revolutionary claims, see Ex. Doc. No. 42, vol 2, 2d Sess. 25th Cong.

In *U. S. vs. Sherman*, 8 Otto, 567, the Supreme Court said of a general interest statute—

“Such legislation * * * has no application to the Government.”

And in *Gordon vs. U. S.*, 7 Wall., 188, a part of the syllabus is—

“*Seem* that the court does not sanction the allowance of interest on claims against the Government.” (*Todd vs. U. S.*, Devereux, 95; *U. S. vs. McKee*, 1 Otto, 450.)

In *Des Moines vs. Harker*, 34 Iowa, 84, it was decided that “the words ‘*bodies corporate and politic*’ are held not to include the State,” nor a county charged with the administration of a fund in which the State is interested, or as to matters relating thereto.

III.—As between individuals, interest is not allowed at common law, but only by statute or contract, express or implied, or by usage which, as implied contract, enters into the dealings of men, or in cases of tort, in the discretion of the jury.

A general usage, long continued, may become common law; but the rate of interest arising on contract has been in the United States almost invariably limited by statute.

1. All this is determined by many authorities. In *Harmonson vs. Wilson*, 1 Hughes, 229, it is said:

“There are * * * three cases in which interest may become due—by obligation *ex contractu*; by obligation *quasi ex contractu*; and by obligation *ex delicto*—that is to say, by contract, by implied contract,

and by tort, [by tort, in the discretion of juries—*Lincoln vs. Clafin*, 7 Wall., 132,] interest not being a subject of common-law right, but of legislative permission.”

By the *ancient* common law it was unlawful to contract for interest; hence Hume, in his *History of England*, at chapter 33, says:

“In 1546, a law was, for the first time, passed, fixing the interest of money at 10 per cent. Formerly all loans of that nature were regarded as usurious. The preamble of this very law treats the interest of money as illegal and criminal.”

Mr. Jefferson (*American State Papers*, vol. 1, 1st ed., p. 307) says that—

“In England all interest was against law until the statute of 37 Henry VIII, c. 9. The growing spirit of commerce, no longer restrained by the principles of the Roman Church, then first began to tolerate it. The same causes produced the same effect in Holland, and perhaps in some other commercial and Catholic countries.”

The statute of Henry VIII is not an *affirmative*, but a *negative* statute; it provides that—

“None shall take for the loan of any money or commodity above the rate of ten pounds for one hundred pounds, for one whole year.”

All statutes passed since, in England, are of the same character.

The authorities which show that there is no right to interest at common law are abundant. This is shown in a communication dated May 29, 1792, by Mr. Jefferson, Secretary of State, to Mr. Hammond, the British Minister. (Vol. 1, *American State Papers*, 304–317.)

Mr. Jefferson also discusses the question of interest not running during war. (See *Harmonson vs. Wilson*, 1 Hughes, 212; *Ward vs. Smith*, 7 Wall., 447; *Viner's Abr.*, tit. Interest, C., sec. 7; *Chitty on Cont.*, tit. Interest; *First Nat. Bank vs. Garghingam*, 22 Ohio St., 496.)

In 7 Op., 529, it is said, with many authorities cited to support it, that—

“The origin of interest is by *statute*, not common law, and it is allowable without express agreement *only* where usage, constituting a part of the contract, or the statute gives it.”

Interest by *implied contract—usage*. (*Page vs. Newman*, 9 B. & Cres., 378; *Foster vs. Weston*, 6 Bing., 799; *Colton vs. Bragg*, 15 East, 223; 1 H. & M., 211; *Wood vs. Hicock*, 2 Wend., 50; *Robinson vs. Bland*, 2 Bur., 1086; 3 Cow., 436; 2 Bro., C. C., 33; 1 P. Wms., 376; 7 Johns. R., 213; 15 Johns., 424; 3 Wils., 205.)

4. Some of the authorities cited in 14 Opinions Attorneys-General, 466, in support of the right to interest, show that there is no such right until “*after a demand, made by the party entitled, of the officers charged*

by law with the duty of making payment. (*People vs. Canal Commissioners*, 5 Denio, 401.)

But there is no evidence of a demand of payment by the holders of these Board of Audit certificates. A creditor who does not desire to use or loan his money, or who cannot employ it, may prefer to leave it in safe hands.

To hold that every creditor of a State or of the Government is entitled to interest on every over-due demand, even if liquidated, and especially without demand of payment and a refusal to pay, would introduce a principle which cannot be sanctioned.* Undoubtedly, the law does not require a useless or vain thing to be done; but it is not useless to make demand of payment, so that the State may know that appropriations are required, and make them accordingly.

The general principles arising and herein stated on the claim now made will govern the action of the Treasury Department.

TREASURY DEPARTMENT,

First Comptroller's Office, September 4, 1880.

*In further illustration of the principles stated on page 104, it may be said that even the Government, by becoming a party to bills of exchange and bonds, to a certain extent accepts the liabilities of individuals. (2 Op., 504; 4 Op., 90, 295, 299; 8 Op., 1; 15 Pet., 377; 12 Wheat., 559; 5 How., 382; 7 Wall., 666; *Texas vs. Hardenberg*, 10 Wall., 68; *Vermilye vs. Adams Ex. Co.*, 21 Wall., 138.)

IN THE MATTER OF THE INDORSEMENT OF PUBLIC-DEBT TREASURY INTEREST-CHECKS.—RHAWN'S CASE.

1. Under the Revised Statutes, section 161, the Secretary of the Treasury may prescribe "regulations" requiring evidence of the authority of officers of national banks to indorse checks or drafts beyond that which general usage or the common law or statute of a State makes evidence in courts.
2. The "regulations" prescribed on this subject do not go beyond the usage or common-law rule in courts, except that as to bank presidents and officers who are not *ex virtute officii* authorized to indorse, evidence of authority must be furnished by duly certified resolution of the board of directors; whereas, in court, parol evidence is generally sufficient when an officer has been usually exercising powers.
3. The president of a national bank is not *ex virtute officii* authorized to indorse checks; hence, his authority to do so must be proved by the evidence required by the regulations of the Secretary of the Treasury.
4. Cashiers of national banks have authority *ex virtute officii* to indorse checks.
5. The powers of bank presidents and cashiers may be enlarged or limited by authority of the proper board of directors, either by resolution or by sanction shown by usage without objection from them.

6. If the board of directors of a national bank limit the authority of a cashier so that it is less than that generally exercised, parties dealing with such cashier are not chargeable with such limitation, unless it is in fact or by reasonable inference brought to their knowledge.

The interest which matures on *registered* bonds of the United States is paid to the parties respectively entitled thereto by checks drawn by the Treasurer of the United States on the Treasury, or on an assistant treasurer or designated depository. There are sundry provisions of law respecting these checks or drafts. (*Ante*, 13; and Rev. Stats., 300, 4046, 5208.)

The following "regulation" has been issued by the Treasury Department on the subject to which it relates:

Treasurer's Office—Form 30. }
LOANS. }

4½ PER CENT. FUNDED LOAN OF 1891.

Notice to Holders of Registered Stock.

The books of the Department are closed to the transfer of stock on the evening of the last day of January, April, July, and October, and reopened for transfer and exchange on the morning of the first day of March, June, September, and December.

The dividends are payable quarterly, at the office of the Treasurer U. S. or an Assistant Treasurer U. S., on the first day of March, June, September, and December, by check, which is sent by mail, on the dates last above mentioned, to holders of stock or to parties designated by holders to receive their checks. Said check can only be drawn in the name of the payee inscribed on the face of the stock, but may be paid upon the endorsement of an *attorney, guardian, executor, trustee, administrator, secretary, or treasurer*; such endorsement will not be recognized unless evidence of authority has been filed in the office of the First Auditor of the Treasury.

Checks will be paid upon the endorsement of any one of several joint holders, co-attorneys, guardians, &c., but in a transfer of stock, or in the execution of a power of attorney to collect interest all must join.

Checks to European addresses are forwarded early in the month preceding interest days to Messrs. McCULLOCH & Co., Bankers, 41 Lombard street, London, by whom they are mailed through the British General Post Office.

DUPLICATE CHECKS.—Request being made for a duplicate, payment of the original check will be stopped, and upon satisfactory proof of its loss, a bond of indemnity (in double the amount of the lost check) will be prepared in this office, and transmitted for execution. Upon the return of the bond executed according to instructions, and its approval by the First Comptroller, a duplicate check will be issued, after *forty-five days* have elapsed from the date of the original. **EUROPEAN (foreign)** holders of stock will be required, under the ruling of this Department, to execute such a bond with two sureties resident in the United States.

THE SCHEDULES, (*from which the checks are written and mailed,*) giving the name and address of each payee, and also the amount of bonds

held by him, and the interest due thereon, are prepared quarterly in the office of the "Register of the Treasury, Washington, D. C.," to whom all communications relating thereto should be addressed.

CHANGE OF ADDRESS.—Request to change the post-office address of a person entitled to receive interest-checks, should give the title of the loan and the last post-office address, and be sent to the Register in time to reach that officer before the transfer books close. The address should be given in full—*street and number*.

Evidence of authority to endorse checks payable to corporations or societies, *except in the case of cashiers of national banks*, must be furnished by resolution of the official board of such corporation or society, under the seal of the same, and filed with the "First Auditor of the Treasury, Washington, D. C.," otherwise such checks will be returned to the parties through whose hands they have passed for collection, with reclamation for the amounts paid on such defective endorsements.

The same evidence is required in the case of endorsements by ASSISTANT CASHIERS, PRESIDENTS, and VICE-PRESIDENTS of national banks. *Stamped endorsements will not be recognized.*

No acknowledgment of the receipt of interest-checks is desired.

TREASURY OF THE UNITED STATES, *June, 1880.*

On the 2d of September, 1880, the president of the National Bank of the Republic, of Philadelphia, addressed a letter to the Comptroller of the Currency, stating that *he*, as president, indorsed interest-checks due the bank, but that the assistant treasurer on whom they were drawn refused payment, for want of evidence of his authority to indorse. He says:

"I have always understood the president of a bank to be the chief executive officer, who, by virtue of his office, has full power and authority to perform all the duties of presiding officer of the bank, including, of course, the endorsement of all checks and instruments payable to the bank as occasion may require. I think this has been universally accepted heretofore, and I am at loss to know why the Treasury has now departed from usage and set up this new rule. I presume that there must be some good reason for its adoption, which it may be important for the banks to know, and I would therefore feel greatly obliged if you would procure me an explanation that I may submit it to our Clearing-House association, of which I am secretary."

The Comptroller of the Currency, on September 3, referred this letter to the First Comptroller of the Treasury for reply.

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DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

The question presented is, simply, whether the president of a national bank, *ex virtute officii*, has such authority to indorse interest-checks, as makes it the duty of disbursing officers of the Government to recognize his indorsement without evidence of his authority.

It is a sufficient answer to this inquiry to say that the Secretary of

the Treasury has by "regulation" required evidence of authority and prescribed what it should be.

The statute provides that—

"The head of each Department is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it." (Rev. Stats., 161.)

Under this authority the Secretary of the Treasury may require evidence of the authority of officers of national banks *beyond* what *general usage* or even the *common law* or the statute of a State makes evidence in courts. The power conferred on the Secretary of the Treasury is such that he may exercise a wise discretion, and determine what is required for the safety of the Treasury, limited only by the provision that he can make no regulation "inconsistent with law."

The "law" referred to is *statute* law of Congress, not *common law* or *usage*, or the statute of a State. This is evident from the fact that the provision is in a statute and is dealing with statutes, and it is to be construed in the light of the maxim, *noscitur a sociis*.

But the regulation on this subject is not in conflict with general usage, or common law as administered in courts, except only that in courts it may not always be necessary to produce a duly-certified copy of a "resolution of the official board" of directors of a national bank, giving authority to the president of such bank, but his authority may be shown by parol evidence of usage in any particular case.

The requirement of written evidence of authority is a wise and necessary regulation. Parol evidence, which might be sufficient for a court in a given case for the time being, may become inaccessible after the lapse of time, or unattainable by Government officers without difficulty and expense.

The authority of the president of a bank is thus stated in Morse on Banks, 2d ed., 146:

"The control of the president of a bank over its property of any description whatsoever, from real estate down to a naked right to bring an action at law, is of the slightest. He has no power to draw checks in its behalf, or against its funds. He is not the executive officer who has charge of its moneyed operations. It is not among his functions to withdraw or remove its deposited funds, or to use them for any purpose whatsoever. He cannot even employ any portion of the assets or credits of the bank for paying or settling with its creditors, unless by virtue of an express delegation of authority from the directors. He has no more power of management or disposal over the property of the corporation than any other single member of the board. These remarks, of course, refer to his inherent powers enjoyed *virtute officii*;

for, of course, if any resolution or any established usage gives him the power, either at all times or under special circumstances, to draw against the corporate deposits, he may do so within the limits of the power."

The doctrines here stated are supported by abundant authority. (Angell & Ames on Corp., 10 ed., sec. 299, pp. 300-313; Heckner *vs.* U. S. Bank, 8 Wheat., 361; Lafayette Bank *vs.* State, 4 McL., 208; Ridgway *vs.* Farmers' Bank, 12 S. & R., 265; 1 Parsons, Sel. Cas., 243; 6 Porter, [Ala.,] 166; 15 Conn., 445; 1 Sm. & Marsh, 237; 10 Ga., 9; 17 Ill., 40; Gibson *vs.* Goldthwaite, 7 Ala., 281; Neiffer *vs.* Bank of Knoxville, 1 Head, [Tenn.,] 162; Fulton Bank *vs.* N. Y. & S. C. Co., 4 Paige, 127; Reed *vs.* Bank, 6 Paige, Ch. 337; Bank U. S. *vs.* Dana, 6 Pet., 51; 8 Pet., 16; 7 Grat., 352; Merch. Nat. Bank *vs.* State Bank, 10 Wall., 604; Hoyt *vs.* Thompson, 1 Seld., 320; Legget *vs.* N. J. Manufacturing Co., Saxt., Ch. 542; Olney *vs.* Chadsay, 7 R. I., 224; Crump *vs.* U. S. M. Co., 7 Grat., 352; Brouwer *vs.* Appleby, 1 Sandf., 158; Spyker *vs.* Spence, 8 Ala., 333; Mt. Sterling T. Co. *vs.* Looney, 1 Metc., [Ky.,] 550; Farmers' Bank *vs.* McKee, 2 Pa. St., 318; 14 Mass., 180; 17 Mass., 97; Spalding *vs.* Bank, 9 Barr, 28; Treasurer Mt. Olivet Co. *vs.* Shubert, 2 Head, 116; Faneuil Hall Bank *vs.* Bank Brighton, 16 Gray, 534.)

There are exceptions resting on local reasons. (Caryl *vs.* McElrath, 3 Sandf., 129; Chamberlain *vs.* M. M. Co., 20 Mo., 96 a.)

The "regulations" referred to do not require evidence of the authority of cashiers of national banks to indorse interest-checks.

Their authority is so universal that courts take judicial notice of it and executive officers recognize it.

The Supreme Court of the United States has said that the cashier is the chief "executive officer through whom the whole financial operations of the bank are conducted."

That is, he is such *generally ex virtute officii*. (Morse on Banks, 2d ed., 152; 1 Whart. Ev., 276, 340. See cases, *supra*. Merchants' Bank *vs.* State Bank, 10 Wall., 604, 650; Burnham *vs.* Webster, 19 Maine, 232; Sturges *vs.* Bank Circleville, 11 Ohio St., 153; Minor *vs.* Merch. Bank, 1 Pet., 46; 3 Mason, 505; 1 Watts & S., 101, 234; 21 How., 356; 26 Maine, 428.)

And courts take judicial notice of his authority. (Wharton on Agency, 678; Wharton, Ev., 298; U. S. *vs.* City Bank, Columbus, 21 How., 356; Lafayette Bank *vs.* State Bank, 4 McL., 208; 7 Hill, 91; Bank Met. *vs.* Bank, 1 How., 234; 3 Bing., N. C., 724; Schuchardt *vs.* Allen, 1 Wall., 359; Barnett *vs.* Brandas, 6 M. & Gr., 630; Manny *vs.* Dunlap, 3 West. Jur., 329; s. c. 17 Pittsb. L. J., 11; 23 Beav., 370.)

Cashier *de facto*. (Bank U. S. *vs.* Dandridge, 12 Wheat., 64; Minor *vs.* Merch. Bank, 1 Pet., 46.)

The powers of a cashier may, of course, be limited in all cases by law, or, in any case, by the board of directors of a bank, (Rev Stats., 5136,) or by general usage known to and not disapproved by the directors in a particular place; but the public at large will not be chargeable with notice of such limitation when acting in good faith under circumstances where it may be reasonably inferred that the limitations were unknown. (U. S. *vs.* City Bank, 21 How., 356; Com. Bank *vs.* Kortright, 22 Wend., 348; 11 Ohio St., 153; Com. Bank *vs.* Norton, 1 Hill, 501; Bank Vergennes *vs.* Warren, 7 Hill, 91; Beers *vs.* P. Glass Co., 14 Barb., 358; Wild *vs.* Bank, 3 Mason, 505; Thompson's National Bank cases, 62, &c.; Farmers' Bank *vs.* Butchers' Bank, 16 N. Y., 125; Schuyler's case, 34 N. Y. 30.)

It seems to be supposed that it is a "new rule" to require evidence of the authority of a bank president to indorse checks.

The "regulations" prescribed in circular No. 25 of October 22, 1878, provide:

"7. Evidence of authority to endorse for incorporated or unincorporated companies must accompany drafts drawn or endorsed to the order of such companies or associations. Such evidence should be in the form of an extract from the by-laws or records of the company or association, showing the authority of the officer to endorse, receive moneys, &c., for the company, and giving his name and the date of his election or appointment, which extract should be certified to by the secretary or president of the company, and its seal be affixed, and the certificate should state that such authority remains unrevoked and unchanged. If the company has no seal, the extract should be certified as correct by a notary public or other competent officer, under his seal."

But even this, which is yet in force, is no new rule.

There is a book, published in 1859, before national banks were in existence, entitled "The Banks of New York, their Dealers, the Clearing-House, and the Panic of 1857, by J. S. Gibbons"—who was evidently not a lawyer—in which I find the following:

"The president is the chief executive officer of the bank. He presides at the meetings of the board of directors, and to a great extent exerts the authority of the board in its recess. In some of the larger banks, there is a stated vice-president to aid him in his duties, and to assume them entire during his absence; but generally a president *pro tem.* is chosen in the latter case. In all legal relations, the president is *the bank*, though still subject to the board of directors. The title of any real estate that it may own is vested in him, and his official signature gives title by conveyance. He is plaintiff or defendant in suits at law. He is made the assignee of property as security for debts due to the bank."

As applied to the national-banks of the country generally, now, this extract has scarcely a single correct statement.

TREASURY DEPARTMENT,

First Comptroller's Office, September 9, 1880.



The following circular relates, among other matters, to the payment of interest by checks:

"TREASURY DEPARTMENT,
Washington, D. C., January 16, 1878.

"The Secretary of the Treasury hereby gives notice that, from the 26th instant, and until further notice, he will receive subscriptions for the four-per-cent. funded loan of the United States, in denominations as stated below, at par and accrued interest, in coin.

"The bonds are redeemable July 1, 1907, and bear interest, payable quarterly, on the 1st day of January, April, July, and October of each year, and are exempt from the payment of taxes or duties to the United States, as well as from taxation in any form by or under State, municipal, or local authority.

"The subscriptions may be made for coupon bonds of \$50, \$100, \$500, and \$1,000, and for registered bonds of \$50, \$100, \$500, \$1,000, \$5,000, and \$10,000.

"Two per cent. of the purchase-money must accompany the subscription; the remainder may be paid at the pleasure of the purchaser, either at time of subscription or within thirty days thereafter, with interest on the amount of the subscription, at the rate of four per cent. per annum, to date of payment.

"Upon the receipt of full payment, the bonds will be transmitted, free of charge to the subscribers, and a commission of one-fourth of one per cent. will be allowed upon the amount of subscriptions, but no commission will be paid upon any single subscription less than \$1,000.

"Forms of application will be furnished by the Treasurer at Washington, the assistant treasurers at Baltimore, Boston, Chicago, Cincinnati, New Orleans, New York, Philadelphia, St. Louis, and San Francisco, and by the national banks and bankers generally. The applications must specify the amount and denominations required, and, for registered bonds, the full name and post-office address of the person to whom the bonds shall be made payable.

"The interest on the registered bonds will be paid by check, issued by the Treasurer of the United States, to the order of the holder, and mailed to his address. The check is payable on presentation, properly endorsed, at the offices of the Treasurer and assistant treasurers of the United States.

"Payments for the bonds may be made in coin to the Treasurer of the United States at Washington, or assistant treasurers at Baltimore, Boston, Chicago, Cincinnati, New Orleans, New York, Philadelphia, St. Louis, and San Francisco.

"To promote the convenience of subscribers, the Department will also receive, in lieu of coin, called bonds of the United States, coupons past due or maturing within thirty days, or gold certificates issued under the act of March 3, 1863, and national banks will be designated as depositaries under the provisions of section 5153, Revised Statutes

of the United States, to receive deposits on account of this loan, under regulations to be hereafter prescribed.

"JOHN SHERMAN,
"Secretary of the Treasury."

In a circular issued "under authority of a contract with the Secretary of the Treasury," June 14, 1877, by August Belmont & Co., New York; Drexel, Morgan & Co., New York; J. & W. Seligman & Co., New York; Morton, Bliss & Co., New York; First National Bank of the city of New York; Drexel & Co., Philadelphia, concerning the receipt of subscriptions for the four-per-cent. funded loan of the United States, it is stated that—

"The interest on the registered stock will be paid by check, issued by the Treasurer of the United States to the order of the holder, and mailed to his address. The check is payable on presentation, properly endorsed, at the offices of the Treasurer and assistant treasurers of the United States."

IN THE MATTER OF INDORSEMENT OF TREASURY DRAFTS. MOYER'S CASE.

1. It may *sometimes* be advisable to require Treasury drafts to be indorsed in such form as would transfer similar negotiable instruments by the law of the State where the claimant resides.
2. But the rights of creditors of the Government are to be determined by the laws of the United States; and "regulations" made by the head of a Department in pursuance of an act of Congress are law.
3. The regulations of the Treasury Department of October 22, 1878, as to the indorsement of drafts, adopt the common-law rules applicable to (1) executors and administrators, (2) guardians, and (3) partners. They (1) modify common law usages in some cases; they (2) do not provide for all cases which may arise; and (3) cases will arise in which it may require construction to determine if they are applicable.
4. Joint owners of a draft who are not partners are within the regulations which authorize the payment of such draft on the indorsement of one of the payees.
5. When a draft is issued to a partnership-firm by name, and *all* the partners subsequently and successively die intestate, the administrator of the *last surviving* partner has the legal title in and is authorized to indorse the draft.
6. He will in such case be required to show by proper evidence (1) who were all the members of the firm, (2) their death, (3) that the last survivor died intestate, and (4) who the administrator is.
7. If the last survivor die testate, his executor can indorse.
8. The proper fiscal officer of municipal corporations, *quasi* corporations, and similar political bodies, will be required to produce evidence of his authority, unless he be such officer as that he may be recognized from public notoriety. But executive officers will sometimes require record evidence of authority when local courts would take judicial notice of the official character of many of such officers.
9. The indorsements by joint assignees in bankruptcy and insolvency considered.
10. The "regulations" authorize one of several ordinary trustees to indorse drafts.

A letter, in part, as follows, has been referred to the First Comptroller :

“ MEMPHIS, TENN., *September 3, 1880.*

“I have Treasury draft, in favor of Davis & Norton, for \$398 77 Norton died several years since, leaving Davis surviving partner Davis has since died. Now I want to know if the administrator of Davis, surviving partner, can endorse the draft, and if it will be paid on such endorsement.”—*Gilbert Moyer's Attorney.*

R. M. Capps, for Moyer: (Cites 3 Kent's Com., 63; Parsons on Part., 440; Williams on Ex'rs, 652.)

The administrator of the first deceased has no authority over the partnership assets; he can only call the surviving partner to account and demand from him the interest of his decedent in such assets, after settlement of all partnership debts. If, then, Norton was vested with the legal title to such assets, upon his death such legal title vested in his administrator, and he, in accepting the trust, became responsible, both personally and upon his bond, for the faithful performance of duties in that respect. “The whole personal estate of the deceased vests in the executor or administrator.” (So says Williams on Executors, page 650; also see note *d*², American notes, to page 717, 6th American ed.)

The same authority says, (page 788 :)

“With respect to such personal actions as are founded upon any obligation, contract, or other *duty*, the general rule has been established from the earliest times, that the right of action on which the executor or administrator might have sued in his lifetime survives his death, and is transmitted to his executor or administrator.”

Therefore, it is clear that an executor or administrator shall have action to recover debts of every description due to the deceased.

This case is analogous to that cited in the same work, (page 654,) where it is held that *when the assignee of an insolvent, appointed under the insolvent act, dies, all interest in the personal property so held vests in his administrator until a new assignee be appointed.*

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DECISION BY WILLIAM LAWRENCE, *First Comptroller* :

Among the regulations prescribed by the Treasury Department are the following :

“Treasury or post-office drafts must not be paid until the endorsements conform to the following regulations:

* * * * *

“8. Drafts will be paid to any one of several joint holders or co-trustees, executors, administrators, or guardians; but in the execution of a power to a third party to collect, all must join. In case of the death of either, the survivors will be recognized as having full authority, upon due proof of such death and survivorship.”

Several questions naturally arise as to this:

I. The common-law rules and statutes differ to some extent in different States as to the proper parties to indorse drafts. For the purpose of protecting the Treasury and the right of parties interested, it may be well, so far as possible, to exact every precaution required by the rules of law in the different States when they require more than the general common-law rules or more than the regulations of the Treasury Department.

II.—But the rights of creditors of the Government are to be determined by the laws of the United States, and “regulations” made in pursuance of an act of Congress are law. (*Ante*, this vol., 11.)

These regulations are in some sense *directory*, or like a rule of court; the power that makes can, in particular cases, dispense with them when the public safety does not require their strict enforcement.

Parties entitled to Treasury drafts take them subject to these laws, and payment in accordance with “regulations” must be deemed a discharge of the liability of the Government.

The subject of drafts is daily becoming more and more important. There may be *drafts on the Government*. Thus, consuls abroad are authorized by regulations to *draw* bills of exchange on the Treasury, and Congress has for many years recognized this mode of payment by providing for the payment of exchange and other expenses. These bills, if payment be improperly refused, *bear interest against the Government*. (U. S. *vs.* Bank Metropolis, 15 Pet., 377; 1 Op., 188; 2 Op., 504; 4 Op., 90, 299; 8 Op., 1; 7 Wall., 66; 5 How., 382.)

As to incidental powers in reference to drafts, see Floyd Acceptancy, 7 Wall. R., 666.

III.—The “regulation” above referred to follows the general common-law rule of survivorship as to (1) executors and administrators, (2) guardians, and (3) partners.

1. *As to executors and administrators*: Morse, 291–296; 2 Williams on Executors, 1013, [946,] and notes citing many authorities, 6 Am. ed.; 2 Pars. Cont., 6th ed., 616, [768;] *Ex parte* Rigby, 19 Ves., jr., 463; *Can vs.* Read, 3 Atk., 695; *Allen vs.* Dundas, 3 T. R., 125; *Edmonds vs.* Crenshaw, 14 Pet., 166; *Pond vs.* Underwood, 2 Ld. Raym., 1210; *Paff vs.* Kinney, 1 Bradf. Sur., 1; *Prosser vs.* Wagner, 1 C. B., n. s., 289. *Contra*: *DeHaven vs.* Williams, 80 Pa. St., 480. See *Other vs.* Iveson, 24 L. J., ch. 654; 3 Drew, 177.)

The character of agency should be sufficiently disclosed. (*Carpenter vs.* Farnsworth, 106 Mass., 561; *Bickford vs.* First Nat. Bank, 42 Ill., 238.)

As to co-administrators, it was once held that all must unite in official acts. (*Hudson vs. Hudson*, 1 Atk., 460.) But the King's Bench determined that one of several administrators stands on the same ground as one of several executors. (*Willand vs. Fenn*, 2 Ves., sr., 267; 2 *Williams Ex'rs*, 6th Am. ed., 1017, [950;] 27 Beav., 254; *Ex parte Rigby*, 19 Ves., jr., 463; *Can vs. Read*, 3 Atk., 695; *Allen vs. Dundas*, 3 T. R., 125; *Pond vs. Underwood*, 2 Ld. Raym., 1210; *Prosser vs. Wagner*, 1 C. B., n. s., 289. See *DeHaven vs. Williams*, 80 Pa. St., 480.)

And Williams says, *Ex'rs*, 1018, [951:]

"The power of an executor is not determined by the death of his co-executor, but survives to him. (*Flanders vs. Clarke*, 3 Atk., 509; 1 Ves., sr., 9.) And so, likewise, if administration has been granted to two, and one dies, the other will be sole administrator, and all the power of the office will survive to him." (*Bodly vs. McKinney*, 9 Sm. & M., 339. See *Berger vs. Duff*, 4 Johns. Ch. R., 368; *Hudson vs. Hudson*, Cas. temp. Talb., 127.)

The question whether an executor or administrator can execute a power of attorney to indorse drafts is not now presented for decision. Under such power, if money be drawn, the executor or administrator giving it would be liable. But, in case of insolvency, the question might arise as to his power. General usage seems to recognize the power.

Some powers of trustees are *personal* and cannot be delegated, for *delegatus non potest delegare*. (4 Johns., Ch. R., 368; 3 Vt., 189; 3 Atk., ch. 695; 6 Cush. R., 117; 5 Wheat., 326; 3 M. & W., 402; 8 M. & W., 806; 5 Bing., 442; Story on Agency, p. 14; 1 Domat, B. 1, tit. 16, sec. 3; Byles on Bills, 140; Story on Notes, sec. 444; Parsons' Notes, 162; 2 Kent, 633; Redfield on Wills, 219.)

2. *As to guardians*: If any State has authorized two guardians for one ward, the same principle would probably apply as in case of administrators.

And so of the committee of a lunatic. (See this vol., *ante*, 23.)

3. *As to partners*: Morse, 296; Grant on Bankers and Banking, 32, 33; *Cooke vs. Seeley*, 2 Exch., 749; *Sims vs. Bond*, 5 Barn. & Ad., 389; *Alliance Bank vs. Kearsley*, 6 L. R., C. P., 433; 40 L. J., C. P., 249.

"When a partnership is dissolved by the death of one of the partners, the survivor is entitled to close up the business." (*Evans vs. Evans*, 9 Paige, Ch. R., 180.)

"A demand of copartners in trade belongs to the survivor to collect, notwithstanding an adjustment of all the concerns of the partnership between him and the administrator of the deceased partner, in which it was agreed that the proceeds of such demand should be equally divided between them." (*Peters vs. Davis*, 7 Mass., 256.)

"It is essential to a copartnership, that upon its dissolution by the death of one of the partners, the survivors become entitled to retain and dispose of the company effects for a settlement of its affairs." (*Daniel vs. Stone*, 30 Maine, 386.)

"The surviving partner is legally entitled to the choses in action and assets of the partnership, as well against the representative of the deceased partner as all other persons." (*Calvert vs. Marlow*, 18 Ala., 73.)

"The survivor is entitled to the assets of the firm, and to collect the debts, to the exclusion of the administrator of the deceased partner; he can sue the administrator of the deceased partner for the debt he has collected." (*Shields vs. Fuller*, 4 Wis., 104.)

"The survivor has a legal right to the partnership effects, but is in equity considered as a trustee to pay the partnership debts, and to dispose of the effects of the concern." (*Case vs. Abeel*, 1 Paige, Ch. R., 398; *Crawshay vs. Collins*, 15 Ves., jr., 227.)

"It is an implied condition or reservation of a partnership, even if fixed for a particular time, that, unless the contrary is stipulated, it is dissolved by the death of either partner, at any time within the period." (*Goodburn vs. Stevens*, 5 Gill, 1, 21.)

"By contract, the interest of a partner may extend beyond his death; but unless stipulated, even in a copartnership for a term of years, it is clear that death dissolves the connection." (*Schofield vs. Eichelberger*, 7 Peters, 549; *Burwell vs. Mandeville*, 2 How., 576.)

"Choses in action, debts, and other rights of action, belong to the partnership. These, at law, belong to the surviving partners; and they possess the sole and exclusive right and remedy to reduce them into possession; although, when so recovered, the survivors are regarded as trustees thereof, for the benefit of the partnership, and the representatives of the deceased partner possess, in equity, the same right of sharing and participating in them, which the deceased partner would have possessed, if he had been living." (*Story on Partnership*, sec. 346, 2d ed.; *Gow*, 351.)

Articles of copartnership sometimes contain provisions as to the manner in which the surviving partners shall close the business, and these provisions are to be regarded. (*Suydam vs. Owen*, 14 Gray, 195.)

So, in proper cases, *receivers* may be appointed, whose authority should be recognized. (*Parsons*, Part., 2d ed., 456*n*; *Butchart vs. Dresser*, 4 De Gex, M. & G., 542; *Allen vs. Hill*, 16 Cal., 113; *McKowen vs. McGuire*, 15 La. Ann., 637; *Roys vs. Vilas*, 18 Wis., 169; but see *Skeppworth vs. Lea*, 16 La. Ann., 247; *Calvert vs. Marlow*, 18 Ala., N. S., 72; 1 Dess., 429; 8 Ves. Jr., 317; 6 Beav., 498; *Collyer on Part.*, secs. 129, 666*n*.)

It is apparent that some cases will arise in which (1) questions may be made whether they fall within the "regulation;" there are (2) others clearly not provided for therein; and (3) still others in which the "regulation" somewhat modifies the common-law rule.

Some of these may be noticed:

(1.) *Joint owners, not partners.**

It has been said that "if several persons, *not being partners*, make a deposit to their joint credit, the bank [in which the deposit has been made] ought, strictly speaking, to have the signatures of all of them

* By the regulations prepared by the First Comptroller, and promulgated January 1, 1881, the indorsement of all is required. *Vide Appendix*

appended to a check before paying it. But if the deposit be made to their joint *and several credit*, then the order of any one of them may be honored." (Morse on Banks, 2d ed., 290. See Grant on Banking, 32, 33; Innes *vs.* Stephenson, 1 M. & Rob., 145; Stone *vs.* Marsh, Ry. & M., 364; Brandon *vs.* Scott, 7 El. & Bl., 237; 26 L. J. Q. B., 163; Wallace *vs.* Kelsall, 7 M. & W., 242; Husband *vs.* Davis, 10 C. B., 640; Shortridge's case, 12 Ves., jr., 28; De Haven *vs.* Williams, 80 Pa. St., 480; 2 Parsons, Cont., 6th ed., 616.)

But this rule, it is said, is peculiar to *bankers*, and generally one of several joint contractors may receive payment. (Husband *vs.* Davis, 10 C. B., 645; 4 Eng. L. & E., 342.)

There may be a *joint ownership*—that is, two or more persons may be owners in equal or other proportions—of goods or drafts, and yet *not be partners*.

Partners are *joint owners*, but all joint owners are not partners.

The term "*joint holders*" in the regulations would seem to include all joint owners of drafts, whether partners or otherwise. But in practice the usage is to require the indorsement of all.

(2.) *a.* The question now presented, as to what shall be done when all of the partners, who were the holders of a draft to the partnership-firm, are dead, is *not provided for* by the "regulation."

But, on *principle*, the administrator of the last surviving partner must administer the assets of the firm. (McCartney *vs.* Nixon, 1 Dallas, 81; Wallace *vs.* Fitzsimmons, 1 *Id.*, 248; Price *vs.* Ralston, 2 *Id.*, 65, note.)

In "A Manual for Executors, Administrators, and Guardians," by Howland & Winter, Indianapolis, 1879, p. 31, it is laid down that—

"The duty and right of the surviving partner to collect the assets, and wind up the business of the firm, grows out of, and is incident to, the contract of partnership, and therefore, for such services, no remuneration is promised or implied. [Ames *vs.* Downing, 1 Brad. Surr. R., 321.] On the death of a surviving partner, his administrator stands in the same position, as to the partnership effects, that was occupied by the surviving partner in his lifetime. He has the legal title to the partnership effects, succeeding to it by virtue of his trust as administrator of the surviving partner; yet they are assets of the firm, and should neither be inventoried nor accounted for as property of the intestate." (Thomson *vs.* Thomson, 1 Brad. Surr. R., 34.)

Bradford ("Cases in the Surrogate's Court," 33, 34) says:

"While it is admitted that, at law, the surviving partner is solely entitled to the collection of the choses in action of the firm, there is doubt as to the precise nature of his interest in the personal property of the firm in possession at the death of his copartner. (*Story on Partnership*, 494, *Gow*, 351.) Some writers appear to consider the surviving partner a tenant in common with the representatives of the deceased partner in the goods. While others treat him as having the whole legal title, subject to the claims of creditors and to the equitable rights

of the personal representatives of the decedent." (Hutchinson *vs.* Smith, 7 Paige, 34; Newell *vs.* Townsend, 6 Simon's R., 419.)

It is held by the same authority that the surviving partner is in fact "a trustee in the possession of a fund for the payment of the partnership debts, and the settlement of the partnership concerns. The balance is to be distributed equally between the surviving partner and the representatives of the deceased partner. 'It is only the decedent's share of such balance which belongs to his representatives as part of his estate.' (Egberts *vs.* Wood, 3 Paige's Ch. R., 525; Wilder *vs.* Keeler, 3 Paige, 172.) The administrator of the surviving partner stands in the same position as the surviving partner in his lifetime. Though he has the legal title to the partnership assets, yet they are assets of the firm, and not of his intestate, and should neither be inventoried as property of his intestate, nor be accounted for as property of his intestate. The administrator is in fact a trustee, whose duty it is to collect the partnership property and pay the debts of the firm, and, after the surplus is ascertained and the interests of the partners therein settled, pay the share of the partner first deceased to his personal representatives, and bring the share of the partner last deceased into the accounts of his estate." (Smith *vs.* Jackson, 2 Edwards' Ch. R., 28; Case *vs.* Abeel, 1 Paige's R., 395.)

If such surviving partner die testate, a question might arise as to whether his *executor* would administer the partnership assets, or an administrator should be appointed for the purpose. This might depend on the statutes of wills. (See 1 Williams on Executors, 6th Am. ed., 723, [653, 654;] Fyson *vs.* Chambers, 9 M. & W., 460; Morgan *vs.* Knight, 15 C. B., N. S., 669.)

The executor would seem to be the proper representative. (Calvert *vs.* Marlow, 18 Ala., N. S., 72; Peters *vs.* Davis, 7 Mass., 257; McCartney *vs.* Nixon, 2 Dallas, 66; 1 Williams, Ex'rs, 145.)

(2.) *b.* As to municipal corporations, *quasi* corporations, (*e. g.*, counties,) and similar political bodies, the "regulations" are silent.

Whenever there is for any of these a fiscal officer authorized to collect money, he will be required to produce proper evidence of his authority, with his indorsement.

Where there is no such officer, drafts can only be indorsed by the proper officers acting for the political body, and the indorsement should show that it was made by all or by a quorum of the members at a regular meeting, or by a quorum at a special meeting, of which all the members had notice. And there can be no *delegation* of the power to indorse, or of other official duties, unless authorized by law. (Slicer *vs.* Elder, 2 Cleveland Western Law Monthly, 90; Hobson *vs.*

McArthur, 16 Pet., 182; Pease *vs.* Sandusky, 2 Western Law Journal, 559; Sedgwick on Stats., ch. VIII; Young *vs.* Buckingham, 5 Ohio, 485; Matter of Well's Road, 7 Ohio St., 19; Merchant *vs.* North, 10 Ohio St., 251; 1 Cow., 238; 7 *Id.*, 290, 326, 402, 463, 526, 533; 26 Conn., 192; 21 How., 544; Willcock on Municipal Corporations, *passim*; 6 T. R., 388; 1 B. & P., 229; 21 Wend., 211; King *vs.* Buller, 8 East, 388; 9 *Id.*, 246; King *vs.* Williams, 2 M. & S., 141; 2 N. H., 123, 485; King *vs.* Norris, 1 Bernard R., 385; 7 S. & R., Pa., 517; Orvis *vs.* Thompson, 1 Johns., 500; Green *vs.* Miller, 6 Johns., 38; Ang. & Am. on Corp., ch. 14; 2 Kent, 236; 1 Kyd, 422; 8 Mass. R., 496; 14 *Id.*, 148; 1 Metc., 409; Gridley *vs.* Barker, 1 Bos. & Pull., 236; Potter on Corporations, *passim*.)

As to what is evidence of: 7 Op., 594; Sedgwick on Stats., 330; Dillon on Municipal Corporations, secs. 60, 215–230, 567, 618; Lyon *vs.* Jerome, 26 Wend., 496.

Where the law *requires* a record of corporate or official acts, it becomes evidence thereof. (Dillon on Municipal Corporations, sec. 241; 13 Conn., 227; 6 Wend., 651; 9 Cow., 205; 1 Dutch., N. J., 73; 4 Denio, 392; 10 Johns., 154.)

And sometimes when the law does not, in terms, require such records, they may be evidence. (1 Pa. St., 224; 3 N. H., 499.)

But, generally, such officers cannot make evidence except so far as the law under which they act, in terms, or by reasonable inference, so authorizes.

(3.) There are cases in which the “regulation” somewhat modifies the common-law rule.

a. Thus it is said that—

“In England the inclination has been to extend the same principle [of requiring the indorsement of all who are joint assignees in bankruptcy] by analogy, to assignees of an estate in bankruptcy.” (Morse on Banking, 290; Grant, 28; 2 Parsons' Cont., 6th ed., 616; Innes *vs.* Stephenson, 1 Moody & Ryan, 145; Can *vs.* Reed, 3 Atk., 695; Stone *vs.* Marsh, Ryan & M., 364; *Ex parte* Hunter, 2 Rose, 363; 1 Meriv., 408; *Ex parte* Collins, 2 Cox, 427.)

This question could not arise *in banks* under our recent bankrupt act, which directed how the deposits of drafts and drafts of assignees should be made, the checks requiring the signature of all the assignees, and to be countersigned by the Register in Bankruptcy. (Rule XXVIII, supplementary to act of March 2, 1867.)

But Parsons says “this rule as to *bankers* is peculiar.” (2 Cont., 616 n.)

“It is a general rule,” says Mr. Justice Maule, “that a man may pay a debt to one of several persons with whom he has contracted jointly.

In the case of a *banker*, he cannot do so; but that arises from the particular contract which exists between him and his customer." (*Husband vs. Davis*, 10 C. B., 645; 4 Eng. L. & Eq. R., 342; *Smith vs. Jameson*, 1 Esp., 114; *Bristow vs. Eastman*, *Id.*, 172; *Williams vs. Walsby*, 4 *Id.*, 220; *Stewart vs. Lee, Moody & M.*, 158.)

In *some cases*, the title which a deceased had in respect of a special property in goods is transmissible to his executor or administrator. Thus, a bankrupt died having goods to which his assignees were entitled; his executor or administrator might recover them from a stranger, for there was a good title in the bankrupt, as against all but the assignees. (1 *Williams, Ex'rs*, 6th Am. ed., 653, 654; *Hyson vs. Chambers*, 9 M. & W., 460; *Morgan vs. Knight*, 15 C. B., n. s., 669.)

Upon the death of the assignee of an insolvent, under the English insolvent act of 1 and 2 Vict., c. 110, his special property vested by operation of law in his executors, until a new assignee was appointed. This act, so far as it related to insolvent debtors, has been repealed by the "Bankruptcy Repeal and Insolvent Court Act, 1869." (*Fulcher vs. Howell*, 11 Sim., 100; 1 *Williams, Ex'rs*, [654,] 723.)

b. As to ordinary *trustees*, it has been laid down as the general rule that—

"If the deposit [in bank] is placed to the credit of *divers persons*, as *trustees*, the signature of all [to a check to draw funds] is indispensable to the validity of the check." (*Morse on Banks and Banking*, 2d ed., 290; *Grant on Bankers and Banking*, 30; *Shortbridge's case*, 12 Ves., jr., 28.)

The rule as thus stated is changed by the regulation.

The answer to the inquiry referred to the First Comptroller is, that when a draft is issued to a partnership firm, and all the members have died, the legal representative of the member who died last is the proper person to indorse and collect it.

TREASURY DEPARTMENT,

First Comptroller's Office, September 10, 1880.

The following is the full circular relating to drafts:

CIRCULAR NO. 25.

Instructions of the Treasurer of the United States relative to the indorsement and payment of Drafts of the Treasury and Post-Office Departments.

1878.
DEPARTMENT No. 112. }
Treasurer's Office.

TREASURY OF THE UNITED STATES,
Washington, D. C., October 22, 1878.

Treasury or Post-Office drafts must not be paid until the indorsements conform to the following regulations:

1. The name of the payee, as endorsed, must correspond in spelling with that on the face of the draft; no guarantee of an indorsement,

imperfect in itself, can be accepted. If the name of a payee, as written on the face of a draft, is spelled incorrectly the draft should be returned to the Treasurer U. S. for correction.

2. Indorsements by mark (x) must be certified to by two witnesses, giving their places of residence.

3. Indorsements by executors or administrators must be accompanied by certified copies, under seal, of letters testamentary or letters of administration, as the case may be.

4. Payees and indorsees must indorse by their own hands; officials, officially with full title; firms, the usual firm-signature by a member of the firm, not by a clerk or other person for the firm.

5. Every indorsement must be by the proper written (not printed) signature of the person whose endorsement is required.

6. Powers of attorney for the indorsement of drafts in payment of claims must state the number, date, and amount of draft, and number and kind of warrant, and be dated *subsequently* to the drafts; must be witnessed by *two* persons, and must be acknowledged by the constituent before the Treasurer of the United States or an assistant treasurer, a judge or clerk of a district court of the United States, a collector of customs, a notary public under his seal, or a justice of the peace or commissioner of deeds; if before either of the two latter, the certificate and seal of the county clerk as to the official character and signature of the justice or commissioner is required. If executed in a foreign country, the acknowledgment must be made before a notary public, with his seal attached, or a U. S. consul or minister. The officer taking the acknowledgment must certify that the letter of attorney was *read and fully explained to the constituent at the time of acknowledgment*. (See section 3477, Revised Statutes.)

7. Evidence of authority to indorse for incorporated or unincorporated companies must accompany drafts drawn or indorsed to the order of such companies or associations. Such evidence should be in the form of an extract from the by-laws or records of the company or association, showing the authority of the officer to indorse, receive moneys, &c., for the company, and giving his name and the date of his election or appointment, which extract should be certified to by the secretary or president of the company, and its seal be affixed, and the certificate should state that such authority remains unrevoked and unchanged. If the company has no seal, the extract should be certified as correct by a notary public or other competent officer, under his seal.

8. Drafts will be paid to any one of several joint holders or co-trustees, executors, administrators, or guardians, but in the execution of a power to a third party to collect, all must join. In case of the death of either, the survivors will be recognized as having full authority, upon due proof of such death and survivorship.

JAS. GILFILLAN,
Treasurer U. S.

Approved October 22, 1878:

A. G. PORTER,
Comptroller.

Approved:

JOHN SHERMAN,
Secretary of the Treasury.

The following is the form of power of attorney approved by the Department:

FORM 76—ASSISTANT TREASURER.

To be acknowledged by the constituent before the Treasurer of the United States or an assistant treasurer; a judge or clerk of a district court of the United States; a collector of customs; a notary public or a clerk of any court of record under his seal; or a justice of the peace or commissioner of deeds. If before either of the two latter, the certificate and seal of the county clerk as to the official character and signature of the justice or commissioner is required. If executed in a foreign country, the acknowledgment must be made before a notary public, with his seal attached, or a U. S. consul or minister.

Power of Attorney to Collect Money due on Draft.

Know all men by these presents, That _____, of _____, do appoint _____ attorney to indorse* _____ name— on United States Treasury draft No. _____, dated _____, 18—, for _____ dollars, issued on _____ warrant No. _____; and to receive the amount for _____, hereby ratifying and confirming all that may be lawfully done in virtue hereof.

Witness _____ hand— and seal—, at _____, on this _____ day of _____, 18—.

_____. [SEAL.]
_____. [SEAL.]

Attest:

[Two witnesses.]

_____.
_____.

STATE OF _____,
County of _____, } ss:

Be it known, That on the _____ day of _____, 18—, before me, _____, personally appeared _____, named in the foregoing letter of attorney, who acknowledged the said letter of attorney to be _____ act and deed; and I do hereby certify that the said letter of attorney was read and fully explained to the said _____ at the time of acknowledgment.*

In testimony whereof, I have hereunto set my hand and affixed my _____ seal, the day and year aforesaid.

* Indorse thus: { (Name of payee.) }
by _____, Attorney. }

The following is the provision of the Revised Statutes on the subject:

"SEC. 3477. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for pay-

* In the form prepared by the First Comptroller, promulgated January 1, 1881, the certificate must show some additional facts. See the form in Appendix.

ment, and must be acknowledged by the person making them before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same."

(See 9 Stats., 41; 10 Stats, 170; *Sines vs. U. S.*, 1 Ct. Cls., 12; *Cooper vs. U. S.*, *Id.*, 85; *Coté vs. U. S.*, 3 *Ib.*, 64; *Lawrence vs. U. S.*, 8 *Ib.*, 252; *Cavendor's case, Id.*, 281; *Trist vs. Child*, 21 Wall., 441; 1 Op., 88; 2 Op., 504.)

It will be seen that the Department regulations require some specifications in the power of attorney not required by the statute.

Applications have been sometimes made to the Treasury Department by *individual* persons for permission to file a *general* power of attorney authorizing an agent to indorse all drafts which *may be issued to them*. It will be seen that this is not authorized by the statute which requires a power of attorney to be executed after the issuing of a warrant. Such general power might estop the party making it, but it would be a violation of duty for Government officers to receive it.

The statute refers to *claims*. The question whether this applies to *salaries* is one which will be hereafter decided. When an officer of a corporation is, by resolution duly certified, authorized to indorse drafts, his authority may continue. It is not requisite that such authority be given for every draft. It may be general for all.

Other forms relating to the general subject of drafts and checks, are, for convenience, given in this connection, as follow:

INSTRUCTIONS CONCERNING DUPLICATE CHECKS.

Revised Statutes of the United States.

SECTION 3646. Whenever any original check is lost, stolen, or destroyed, disbursing officers and agents of the United States are authorized, after the expiration of six months, and within three years from the date of such check, to issue a duplicate check; and the Treasurer, assistant treasurers, and designated depositaries of the United States are directed to pay such duplicate checks, upon notice and proof of the loss of the original checks, under such regulations in regard to their issue and payment, and upon the execution of such bonds, with sureties, to indemnify the United States, as the Secretary of the Treasury shall prescribe.

This section shall not apply to any check exceeding in amount the sum of one thousand dollars.

SEC. 3647. In case the disbursing officer or agent by whom such lost, destroyed, or stolen original check was issued, is dead, or no longer in the service of the United States, it shall be the duty of the proper accounting officer, under such regulations as the Secretary of the Treasury shall prescribe, to state an account in favor of the owner of such original check for the amount thereof, and to charge such amount to the account of such officer or agent.

TREASURY DEPARTMENT,

Washington, D. C., March 11, 1876.

In compliance with the requirements of the preceding sections of the Revised Statutes, the following regulations are established:

Immediately upon the loss of a check, the owner, to better protect his interest, should, in writing, notify the office or bank on which it was drawn of the fact of such loss, stating the name of the officer or agent by whom it was drawn, describing the check—giving, if possi-

ble, its date, number, and amount—and requesting that payment of the same be stopped.

In order to procure the issue of a duplicate check, the party in interest must furnish the officer or agent who issued the original check with an affidavit giving the name and residence of the applicant in full, describing the check and its endorsements, showing his interest therein, detailing the circumstances attending its loss, and what action, if any, he has taken to stop payment thereon. The affidavit must be made and signed before an officer authorized to administer oaths generally, and he must certify that he administered the oath.

He must also furnish to the same officer or agent a bond executed on the accompanying form and according to these instructions, which will be furnished to any officer or agent applying therefor.

The affidavit and the bond, when executed, are to be endorsed by the officer or agent as having been submitted to him, and as being the proof and security upon which he has acted. After the expiration of six months from the time the original check was issued, the officer or agent will issue a duplicate, which must be an exact transcript of the original, especial care being taken that the number and date correspond with those of the original. These papers he will, without delay, forward to the Secretary of the Treasury, who, upon their receipt, will advise the office or bank on which the check was drawn that an application for a duplicate is pending, and the bank or office will immediately inform the Secretary whether a request has been made to stop payment of the original, and whether such original has been presented or paid, and, if not paid, a caveat will be entered, and payment will thereupon be stopped.

If the information obtained is satisfactory to the proper accounting officer of the Treasury, and he approves of the issue of the duplicate, and of the accompanying bond, he will certify such approval in writing, on the papers as well as on the duplicate check, and return them to the Secretary of the Treasury.

Any duplicate check issued in pursuance of these instructions, bearing such certificate and the approval of the Secretary or Assistant Secretary of the Treasury, may, if properly endorsed, be paid by the Treasurer, the assistant treasurer, or depository on whom it is drawn, subject to the same rules and regulations as apply to the payment of original checks; but no duplicate shall be paid if the original shall already have been paid.

In case of the loss of a check issued by a United States disbursing officer or agent who is dead or no longer in the service of the United States, the affidavit and bond required to be furnished by the owner of said check to an officer or agent in the service of the United States, prior to the issue of a duplicate check, should be forwarded to the Secretary of the Treasury, who will refer them to the proper accounting officer for examination and the statement of an account in favor of the owner of said check, as provided for in section 3647.

Whenever such an account shall have been stated, and an officer or agent charged with the amount of any duplicate check, the final accounting officer will notify the Secretary of the Treasury, in order that the amount of the original check, if remaining to the credit of the officer or agent in any United States depository, may be repaid into the Treasury and carried to his credit and to the credit of the proper appropriation.

These regulations apply only to checks drawn for sums less than \$1,000.

B. H. BRISTOW, *Secretary.*

Know all men by these presents, that we, _____, as principal, and _____, and _____, as sureties, are held and firmly bound unto the United States of America in the sum of _____ dollars, lawful money, to be paid to the said United States of America, or their agent or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this _____ day of _____, in the year of our Lord one thousand eight hundred and _____.

Whereas check No. _____, drawn by _____, on the _____, on the _____ day of _____, 18____, payable to the order of _____, for the sum of _____ dollars in payment of _____, has not been paid by the United States, but has been lost under the circumstances set forth in the annexed affidavit, and a duplicate requested to be issued;

And whereas, the regulations of the Treasury Department of the United States require the party thus situated to give bond to the United States, with two sureties to indemnify the United States, before a duplicate will be issued or any payment be made on account thereof; and the proper accounting officer of the Treasury will certify that a duplicate of the aforesaid check should be paid in consideration of the premises and of the execution of this bond:

Now, the condition of this obligation is such, that if the above-bounden obligors, their heirs, executors, administrators, or any of them, shall and do well and truly pay, or cause to be paid, on demand, unto any person who shall establish a valid adverse claim to the above-described original check the full value thereof, with interest until paid, together with all legal costs to which said person may have been subjected in establishing such claim; or shall pay to the United States of America, or their agent or assigns, in lawful money, any sum which shall be erroneously paid, or which shall be ascertained to have been erroneously paid, to the order of said original payee in consequence of the application for a duplicate of said original check, together with all legal costs, and interest on said sum until paid, without any defalcation or delay; then this obligation to be void; otherwise, to be and remain in full force and virtue.

_____. [L. S.]
 _____ [L. S.]
 _____ [L. S.]
 [Seals must be of wax or wafer.]

WITNESS:

I certify that the sureties named in and who executed the above bond are _____ well known to me, and are sufficient for the penalty thereof.

_____,

The following is the manner in which the foregoing bond should be filled up and executed; the parts printed in *Italics* being the part to be filled in, which will be varied as the facts of the case may require:

Know all men by these presents, that we, *John Samuel Doe, of the city of New York, county of New York, and State of New York, as principal, and Richard B. Roe, of the city of Brooklyn, county of Kings, and State of New York, and David Dove, of the town of Elizabeth, county of Union, and State of New Jersey*, as sureties, are held and firmly bound unto the United States of America in the sum of *one thousand* (1,000) dollars, lawful money, to be paid to the said United States of America, or their agent or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this *twenty-fifth* day of *January*, in the year of our Lord one thousand eight hundred and *seventy-two*.

Whereas check No. 93265, drawn by *John R. Brown, Captain and Quartermaster, U. S. A.*, on the *Assistant Treasurer of the United States at Boston*, on the *5th* day of *May*, 1871, payable to the order of *William House*, for the sum of *four hundred and ninety-one* $\frac{25}{100}$ (*491* $\frac{25}{100}$) dollars, in payment of *account for forage*, has not been paid by the United States, but has been lost under the circumstances set forth in the annexed affidavit, and a duplicate requested to be issued;

And whereas the regulations of the Treasury Department of the United States require the party thus situated to give bond to the United States, with two sureties, to indemnify the United States, before a duplicate will be issued or any payment be made on account thereof; and the proper accounting officer of the Treasury will certify that a duplicate of the aforesaid check should be paid in consideration of the premises and of the execution of this bond:

Now, the condition of this obligation is such, That if the above-bounden obligors, their heirs, executors, administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto any person who shall establish a valid adverse claim to the above-described original check, the full value thereof, on demand, with interest until paid, together with all legal costs to which said person may have been subjected in establishing such claim; or shall pay to the United States of America, or their agent or assigns, in lawful money, any sum which shall be erroneously paid, or which shall be ascertained to have been erroneously paid, to the order of said original payee in consequence of the application for a duplicate of said original check, together with all legal costs, and interest on said sum until paid, without any defalcation or delay, then this obligation to be void; otherwise, to be and remain in full force and virtue.

JOHN SAMUEL DOE. [L. S.]
 RICHARD B. ROE. [L. S.]
 DAVID DOVE. [L. S.]

[Seals must be of wax or wafer.]

WITNESS:

As to John Samuel Doe:

WILLIAM WOOD,
 ROBERT SMITH.

As to Richard B. Roe:

HENRY MORGAN,
 JOHN SMILES.

As to David Dove:

JAMES MARKS,
 HENRY JOHNSON.

I certify that the sureties named in and who executed the above bond are **personally* well known to me, and are sufficient for the penalty thereof.

JOHN MOORE,
Collector Int. Rev., 32d Dist., N. Y.

* Or by *reputation*, as the case may be.

General Instructions.

1. The christian names must be written in the body of the bond in full, and so signed to the bond.

2. Each signature must be made in the presence of two persons, who must sign their names as witnesses.

3. The penalty of the bond should be in even dollars, and at least double the amount of the lost check, but in no case less than one hundred dollars.

4. Either a United States judge, commissioner, district attorney, marshal, assessor or collector of internal revenue, collector, naval officer, or surveyor of the customs, assistant treasurer or designated depository of the United States, president or cashier of a national-bank depository of the United States, under his proper official designation and seal, or a clerk of a court of record, under the seal of the court, or a commissioned officer of the Army or Navy of the United States, must certify that the sureties are sufficient to pay the penalty of the bond.

5. A seal of wax or wafer must be attached to each signature.

6. The residence and post-office address (giving number and street where the residence is so designated) of the principal and of each surety and witness must be given below:

[Indorsement.]

No. —.

Bond of Indemnity.

—, and sureties, to the United States.

Check No. —, drawn by —, on the —, on the — day of —, 18—, payable to the order of —, for the sum of \$—.

Duplicate issued on the within bond and affidavit hereto attached —, 18—.

Approved and duplicate check certified —, 18—.

* The disbursing officer should give his official disbursing title.

Form of Bond for the Issue of Duplicate Draft.

Know all men by these presents, That we,* —, of —, in the — of —, as principal —, — and —, of —, in the —, of —, and — of —, in the — of —, as sureties, are held and firmly bound unto the United States of America in the sum of — dollars, lawful money, to be paid to the United States of America or their assigns; to which pay-

ment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this — day of —, in the year of our Lord one thousand eight hundred and —.

Whereas, Draft No. —, on — warrant No. —, drawn on the — on the — day of —, anno Domini one thousand eight hundred and —, payable to the order of —, for the sum of — dollars and — cents, (\$—,) —.†

And whereas the regulations of the Treasury Department of the United States require the party thus situated to give bond to the United States, with two sureties, to indemnify the United States, before, a duplicate will be issued or any payment be made on account thereof; and the Comptroller of the Treasury is willing to certify that a duplicate of the aforesaid draft should be issued in consideration of the premises and of the execution of this bond:

Now, the condition of this obligation is such, That if the above-bounden obligors, their heirs, executors, or administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto any person who shall establish a valid adverse claim to the above-described original draft, the full value thereof, on demand, with interest until paid; or shall pay to the United States of America, or their assigns, in lawful money, any sum which shall be erroneously paid, or which shall be ascertained to have been erroneously paid; to the order of said —, in consequence of — application to the Treasury Department of the United States for a duplicate of said original draft, together with all legal costs, and interest on said sum until paid, without any defalcation or delay; then this obligation to be void, or else to be and remain in full force and virtue.

— —. [SEAL.]
— —. [SEAL.]
— —. [SEAL.]

Signed, sealed, and delivered in presence of—

— —.
— —.
— —.

I do hereby certify that the sureties to the above bond are sufficient for the penalty thereof.

— —.†

* Full names and residences of principal and two sureties.

† Describe mode of loss.

‡ Assessor or collector of internal revenue; U. S. judge, marshal, district attorney, clerk of court, assistant treasurer or depositary, collector of customs, naval officer or surveyor.

Instructions for Executing this Bond.

1. The given names should be inserted and signed in full.
2. Carefully observe and comply with the marginal instructions.
3. If a bank is the principal, the blank in the first and second lines of the bond must be filled thus: "The — Bank of —, in the — of —, by —, cashier, duly authorized thereto by resolution of the board of directors;" the bond must be signed for the bank by the cashier, thus: "The — Bank of —, by —, cashier," and the seal of the bank must be affixed; and a copy of a resolution of the board of directors, authorizing the cashier to execute the bond on behalf of the bank, certified to be correct by the secretary of the board, under the seal of the bank, must be returned with the bond.
4. If a firm is the party in interest, the names of the individual members should be inserted as the principals of the bond, thus: "John Jones and James Smith, composing the firm of Jones & Smith," and the bond should be signed by each of them.
5. The principal to the bond must make affidavit of loss. The form below given will answer in most cases:

Affidavit.

STATE OF _____,
County of _____, } ss:

Be it known, That before me, the undersigned, a _____ in and for said county and State, personally appeared _____, to me well known to be the identical person named in the foregoing bond, who, being duly sworn, deposes and says, that the statement of facts given in said bond relative to the loss of the draft therein specified, is in all respects true, and deponent has made diligent search to find the said draft, in all places where it was likely to be found, without success.

Sworn and subscribed before me, }
this _____ day of _____, 18—. }

_____.

[Indorsement.]

No. _____

Bond of Indemnity.

_____, and sureties, to the United States.

Draft No. _____, on _____ Warrant No. _____, drawn on the Assistant Treasurer of the U. S. at _____, on the _____ day of _____, 18—, payable to the order of _____, for the sum of \$_____.

Outstanding _____, 18—.

_____, *Book-keeper.*

Approved _____, 18—.

_____, *Comptroller.*

Duplicate issued _____, 18—.

Circular in relation to Powers of Attorney.

1876.

DEPARTMENT No. 130. }

Warrant Division No. 2. }

TREASURY DEPARTMENT, *October 10, 1876.*

The order of the Department of April 16, 1875, relating to powers of attorney, is hereby revoked, and the following adopted in lieu thereof:

In every case to be finally adjudicated in this Department, the attorney shall present a letter of attorney from the claimant to prosecute the case, and shall be regarded as the attorney in such case, with the right to receive any draft therein. The claimant may change his attorney at any time, with the consent of the proper officers of the Department.

In cases certified for payment by the Court of Claims, or by any commission created by Congress, the persons certified by said court or commission as the attorneys of record shall be regarded as such by this Department, and be entitled to receive the drafts in such cases.

In all cases drafts for claims will be made to the order of the claimant, and will be delivered to the proper attorney, according to this order.

The Secretary reserves the right in all cases to make such special orders as may be proper.

LOT M. MORRILL,
Secretary.

*Circular Instructions concerning the Payment of Treasury Drafts and
Official Checks of Public Disbursing Officers.*

1877.
DEPARTMENT No. 27. }
Ind. Treas. Div. No. 28. }

TREASURY DEPARTMENT,
Washington, D. C., February 13, 1877.

The following sections of the Revised Statutes of the United States, and the subsequent regulations, are published for the information and guidance of all concerned :

“SECTION 306. At the termination of each fiscal year all amounts of moneys that are represented by certificates, drafts, or checks, issued, by the Treasurer, or by any disbursing officer of any department of the Government, upon the Treasurer or any assistant treasurer, or designated depositary of the United States, or upon any national bank designated as a depositary of the United States, and which shall be represented on the books of either of such offices as standing to the credit of any disbursing officer, and which were issued to facilitate the payment of warrants, or for any other purpose in liquidation of a debt due from the United States, and which have for three years or more remained outstanding, unsatisfied and unpaid, shall be deposited by the Treasurer, to be covered into the Treasury by warrant, and to be carried to the credit of the parties in whose favor such certificates, drafts, or checks were respectively issued, or to the persons who are entitled to receive pay therefor, and into an appropriation account to be denominated ‘outstanding liabilities.’”

“SEC. 308. The payee or the bona-fide holder of any draft or check the amount of which has been deposited and covered into the Treasury pursuant to the preceding sections, shall, on presenting the same to the proper officer of the Treasury, be entitled to have it paid by the settlement of an account and the issuing of a warrant in his favor, according to the practice in other cases of authorized and liquidated claims against the United States.

“SEC. 309. The amounts, except such as are provided for in section three hundred and six, of the accounts of every kind of disbursing officer, which shall have remained unchanged, or which shall not have been increased by any new deposit thereto, nor decreased by drafts drawn thereon, for the space of three years, shall in like manner be covered into the Treasury, to the proper appropriation to which they belong; and the amounts thereof shall, on the certificate of the Treasurer that such amount has been deposited in the Treasury, be credited by the proper accounting officer of the Department of the Treasury on the books of the Department, to the officer in whose name it had stood on the books of any agency of the Treasury, if it appears that he is entitled to such credit.

“SEC. 310. The Treasurer, each assistant treasurer, and each designated depositary of the United States, and the cashier of each of the national banks designated as such depositaries, shall, at the close of business on every thirtieth day of June, report to the Secretary of the Treasury the condition of every account standing, as in the preceding section specified, on the books of their respective offices, stating the name of each depositor, with his official designation, the total amount remaining on deposit to his credit, and the dates, respectively, of the last credit and the last debit made to each account. And each disbursing officer shall make a like return of all checks issued by him, and

which may then have been outstanding and unpaid for three years and more, stating fully in such report the name of the payee, for what purpose each check was given, the office on which drawn, the number of the voucher received therefor, the date, number, and amount for which it was drawn, and, when known, the residence of the payee."

REGULATIONS.

(1.) Hereafter any Treasury draft or any check drawn by a public disbursing officer still in service, which shall be presented for payment before it shall have been issued three full fiscal years, will be paid in the usual manner by the office or bank on which it is drawn, and from funds to the credit of the drawer. Thus, any such draft or check issued on or after July 1, 1873, will be paid as above stated until June 30, 1877, and the same rule will apply for subsequent years.

Any such draft or check which has been issued for a longer period than three full fiscal years will be paid only by the settlement of an account in this Department, as provided in section 308 above published; and for this purpose the draft or check will be transmitted to the Secretary of the Treasury for the necessary action.

(2.) The reports of Independent Treasury officers, national-bank depositaries, and public disbursing officers, required by section 310 above published, will be rendered promptly to the Secretary of the Treasury at the close of each fiscal year.

(3.) Whenever any disbursing officer of the United States shall cease to act in that capacity, he will at once inform the Secretary of the Treasury whether he has any public funds to his credit in any office or bank, and, if so, what checks, if any, he has drawn against the same which are still outstanding and unpaid. Until satisfactory information of this character shall have been furnished, the whole amount of such moneys will be held to meet the payment of his checks properly payable therefrom.

(4.) Hereafter, at the close of each fiscal year, the Treasurer, the several assistant treasurers, and designated and national-bank depositaries, will also render to the Secretary of the Treasury a list of all disbursing officers' accounts still unclosed which have been opened on the books of their respective offices or banks more than three fiscal years, giving in each case the name and official designation of the officer, the date when the account with him was opened, and the balance remaining to his credit.

(5.) In case of the death, resignation, or removal of a public disbursing officer, any check previously drawn by him and not presented for payment within four months of its date, will not be paid until its correctness shall have been attested by the Secretary or Assistant Secretary of the Treasury.

(6.) If the object or purpose for which any check of a public disbursing officer is drawn is not stated thereon, as required by departmental regulations, or if any reason exists for suspecting fraud, the office or bank on which such check is drawn will refuse its payment.

CHAS. F. CONANT,
Acting Secretary.

Circular—Transfer or Assignment of Drafts.

1880.
DEPARTMENT No. 6. }
Secretary's Office.

TREASURY DEPARTMENT,
Washington, D. C., January 22, 1880.

To Attorneys practising before this Department:

It appears that attorneys practising in this Department, and receiving drafts payable to the order of claimants who are their clients, frequently deliver such drafts to other parties, sometimes residing long distances from their own or their clients' places of business, as security for money advanced, and other like purposes.

The only right of an attorney in such draft is a lien for his reasonable fees in the prosecution of the claim out of which it issues. He has in it no assignable interest whatever. It is the right of the client to find such draft at all times in the custody of his attorney.

Hereafter the delivery of any such draft by an attorney out of his own control, upon the pretext of a transfer or assignment of any interest therein, as collateral security or otherwise, will be deemed by the Department sufficient cause for depriving such attorney of the privilege of practising in this Department.

JOHN SHERMAN,
Secretary.

IN THE MATTER OF CORRECTION OF TREASURY DRAFT— PEARCE'S CASE.

1. A Treasury draft issued to Pierce, Park & Co. may, on proper evidence, be corrected to read in favor of Pearce, Park & Co.
2. When a claim originated in favor of a partnership-firm, and before a draft issues for its payment some of the members die, it should issue to the survivors or survivor, described as such.

On the 8th of September, 1880, the Treasurer of the United States referred to the First Comptroller a Treasury draft, dated August 18, 1880, (No. E 10295,) on Internal-Revenue Warrant No. 2850, payable to the order of Pierce, Park & Co. for \$618 04, drawn by the Treasurer on the assistant treasurer at New York. It was founded on a claim for refunding of taxes erroneously assessed and collected, as per schedule No. 748. This draft was forwarded to the Treasurer by the cashier of the First National Bank of Memphis, Tennessee, in a letter of September 3, in which he asks that *another draft* be issued in lieu of this, in "favor of *Pearce*, Park & Co., Mr. Pearce, surviving partner, spelling his name *Pearce*, and not *Pierce*."

DECISION BY WILLIAM LAWRENCE, *First, Comptroller:*

The regulations of the Treasury Department of October 22, 1878, provide as follow:

"1. The name of the payee, as endorsed, must correspond in *spelling* with that on the face of the draft; no guarantee of an endorsement, imperfect in itself, can be accepted. If the name of a payee, as written on the face of a draft, is spelled incorrectly, the draft should be returned to the Treasurer U. S. for correction.

* * * * *

"8. Drafts will be paid to any one of several joint holders or co-trustees, executors, administrators, or guardians, but in the execution of a power to a third party to collect, all must join. In case of the death of either, the survivors will be recognized as having full authority, upon due proof of such death and survivorship."

This draft was issued on vouchers in favor of *Pierce, Park & Co.*

It would seem, from the letter presented, that M. C. Pearce is the only surviving member of the persons composing the late firm.

Mr. Pearce is required to furnish, by affidavit, evidence showing (1) what persons composed said firm at and prior to the date of the draft, (2) that such persons are all dead, except himself, (3) that said firm is the identical one having the claim on which the draft issued, and (4) that the correct name of the firm was Pearce, Park & Co.

When this is furnished, the draft can be corrected accordingly, by this office, as is the custom in such cases. If the original papers showed the error, they would be corrected and the correction certified to the Treasurer, whereupon he would correct the draft; but this is not the case.

The Fifth Auditor will be instructed to furnish the information requisite to enable the surviving partner to present the evidence required.

If all the members of the firm except Mr. Pearce were dead at the date of the draft, it should have issued to him as survivor.

When the original vouchers and papers are correct, and on them a draft has issued in a wrong name, the amount of the draft when returned would be deposited by the Treasurer to the credit of the appropriation on which it was drawn, and a corrected certificate of the amount due, on which a new warrant and draft would issue, would be made by the accounting officers. This is the usage when the original papers are correct, and when an error has occurred in the certificate of the amount due.

If the certificate is also correct, and the error has been made by the Treasurer in the name or amount of a draft, it could be cancelled, and a corrected draft issued; or, an indorsement might be made on the draft, to correct it and authorize proper payment.

TREASURY DEPARTMENT,

First Comptroller's Office, September 11, 1880.

IN THE MATTER OF LIGHT-HOUSE APPROPRIATIONS— TILLAMOOK CASE.

1. An act of Congress should not be construed to make a "permanent specific appropriation," unless its language make it reasonably clear that such was the intention. It cannot arise by construction from ambiguous or doubtful words.
2. The 3d section of the act of March 2, 1867, (14 Stats., 466,) which authorizes the use of "unexpended balances" of certain appropriations to be applied to the construction of light-houses "which may *have been* authorized by Congress" relates to light-houses previously authorized, there being such then not completed.
3. In view of the rule of construction stated, it may well be doubted whether such *special* provision in an ordinary act appropriating money for the service of a given fiscal year would justify the use of the money, except during the year, or for the fulfilment of contracts properly made within the year.
4. Unexpended balances remaining at the end of a fiscal year, under annual appropriation acts, can only be applied to the payment of expenses properly incurred during that year, or to the fulfilment of contracts properly made within that year. (Rev. Stats., 3690.)
5. Appropriations for public buildings become available immediately on the approval of the acts making them, and so continue until otherwise ordered by Congress. Such appropriations, therefore, even if made in an annual appropriation act, are, when made after the act of June 20, 1874, (18 Stats., 111,) and by force thereof, "*continuous*."
6. Section 5596 of the Revised Statutes omits from repeal provisions of a private, local, or temporary character contained in prior acts, from which all general and permanent provisions have been taken and incorporated into such Revised Statutes.
7. If a particular section of an act has neither been repealed nor superseded by subsequent acts, nor incorporated into the Revised Statutes, and is general and permanent in its nature, and has been clearly overlooked by the revisers of the statutes, it is yet in force.

Congress authorized the construction of light-houses on the Pacific coast by appropriation acts of August 18, 1856, (11 Stats., 101;) March 3, 1859, (11 Stats., 425;) June 20, 1860, (12 Stats., 63;) March 3, 1863, (12 Stats., 749;) and July 2, 1864, (13 Stats., 346.)

Some of these remained uncompleted when by section 3 of the act of March 2, 1867, (14 Stats., 466,) it was provided—

"That the lighthouse board be authorized to apply any unexpended balance which may remain after the completion of a lighthouse work on the Pacific coast to the construction of any other similar work upon the same coast, which may have been authorized by Congress, but for which the amount appropriated may prove insufficient."

The act of March 3, 1873, appropriated \$25,000 for the construction of a light-house at Point-no-Point, Puget Sound, Washington Terri-

tory; after the completion of which, there remained an unexpended balance of \$7,400.

Congress, by appropriation acts of June 20, 1878, and June 16, 1880, authorized the construction of a light-house at Tillamook, Oregon. The Light-house Board desires to use the unexpended balance of \$7,400 aforesaid, to complete the Tillamook light-house, and, by letter of August 23, 1880, asks the Secretary of the Treasury whether this can be done consistently with section 5596 of the Revised Statutes, which, it has been suggested, repeals the appropriation made by act of March 2, 1867.

This letter was referred, August 27, 1880, to the First Comptroller, for his decision.

The U. S. district attorney for Oregon, in an opinion, August 10, 1880, held that there was no repeal, as suggested.

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

The inquiry made involves more questions than are referred to in these papers.

I.—One question is, Did the act of March 2, 1867, authorize any “unexpended balance” to be used in the erection of a light-house to be *authorized after that date*? Several considerations show that it did not.

1. “Permanent specific appropriations,” sometimes called “indefinite appropriations” or “continuous appropriations,” which are to run without limit as to the time when they may be used, are exceptional, as compared with the larger class of *annual* appropriations.

Sound policy, and the right of Congress to keep a constant vigilance over appropriations and their expenditure, require that an act should not be deemed to carry a permanent specific appropriation, unless its language make it reasonably clear that such was its purpose. It cannot arise by construction from ambiguous or doubtful words.

2. Adopting this rule of construction, or even without it, the words found in section 3 of the act of March 2, 1867, “which may *have been* authorized by Congress,” show that the “unexpended balance” therein authorized to be expended, could only be used in “the construction” of a light-house *which had been authorized prior to March 2, 1867*.

If the statute had said that the unexpended balance might be applied to any light-house “*which may be authorized*,” then the purpose to apply it to a light-house *thereafter* to be authorized would be clear; but the words are “which may *have been*,” and there were *then* such light-houses.

I am aware of the general rule which gives a prospective operation to statutes; and in the present case the rule applies to this extent, that the act of 1867 is to be read as saying "that the Lighthouse board be authorized [*hereafter*] to apply any unexpended balance which may [*hereafter*] remain after the [*future*] completion of a light-house * * * to the construction of any other similar work * * * which may have been authorized by Congress."

But it is by no means clear that this was intended to apply either (1) to balances from future appropriations for previously-authorized light-houses, or (2) to balances of appropriations for light-houses *thereafter* to be authorized.

The appropriation of June 16, 1880, is—

For continuing the erection of a first-class light-house and steam fog-signal on Tillamook Head, Oregon, \$50,000.

This would seem to be the *only* provision for that purpose which Congress intended to make for the current fiscal year.

3. Again, adopting the rule of construction referred to, it is by no means clear that Congress, by the act of March 2, 1867, intended any such "unexpended balance" to be used *after* the fiscal year ending June 30, 1868, unless to complete contracts made during that year. The title of the act is—

"An act making appropriations for sundry civil expenses of the Government *for the year ending June thirtieth, eighteen hundred and sixty-eight*, and for other purposes."

And it sets out by saying that "the following sums are appropriated, * * * for the fiscal year ending the thirtieth of June, eighteen hundred and sixty-eight."

If the language of the 3d section stood in a separate act, it might be much more reasonable to infer that it was intended to authorize the use of an "unexpended balance" after the fiscal year, or as a permanent specific appropriation. (See Rev. Stats., 3685; act July 12, 1870, sec. 5, 16 Stats., 251.)

4. The statute makes appropriations for public buildings "available immediately on the approval of the act" making such appropriations. (Rev. Stats., 355, 3684, 3733, 5503.)

The act of June 20, 1874, (18 Stats., 110,) provides that "permanent specific appropriations, appropriations for * * * light-houses, * * * public buildings, * * * shall continue available until otherwise ordered by Congress." The erection of such buildings may be let out by contract.

Such appropriations were frequently held to be "continuous," when such was clearly the purpose of the acts making them, even before the act of June 20, 1874. (16 Stats., 251; Rev. Stats., 3690; this vol., 1.)

It does not follow that a *special* provision in an *annual* appropriation act, merely transferring an “unexpended balance” of an appropriation, is to be deemed a “permanent specific appropriation.”

It is not strictly an appropriation at all; it is a transfer. But if an appropriation, it has been held in *U. S. vs. Jarvis, Davies R.*, 274, that—

“In the construction of temporary statutes, as annual appropriation acts, the presumption is, that any special provisions of a general character, contained in such acts, are intended to be restricted in their operations to the subject-matter of the act, and they are not to be construed to be permanent regulations, unless the intention of making them so is clearly expressed.”

And so in *Minor vs. U. S.*, 15 Pet., 445.

II.—It remains to consider whether the transfer of “unexpended balance” made by section 3 of the act of March 2, 1867, is repealed by the Revised Statutes, section 5596.

Portions of the act of 1867, sections 1, 2, 4, 5, 7, 10, 12, are incorporated in the Revised Statutes. Those omitted, including section 3, are repealed by Rev. Stats., 5596, unless saved by the proviso.

Section 3 may, perhaps, be regarded as of a *local* and *temporary* character, and so not repealed. A particular section of an act neither repealed nor superseded by subsequent legislation, and yet not embraced in the Revised Statutes, may, when general and permanent in its nature and clearly overlooked by the revisers, be deemed still in force. (*U. S. vs. Bowen*, 100 U. S. 513; and, upon this subject, see this vol., p. 43.)

The unexpended balance of \$7,400 is not available to complete the Tillamook light-house.

TREASURY DEPARTMENT,

First Comptroller's Office, September 13, 1880.

IN THE MATTER OF APPROPRIATIONS FOR LOUISVILLE AND PORTLAND CANAL—CANAL CASE.

1. The acts of Congress of May 18 and June 14, 1880, relating to the Louisville and Portland Canal, construed.
2. The act of May 18, 1880, does not make an appropriation. The act of June 14, 1880, is an appropriation act, and does authorize the expenditure of the “balances in hand” therein referred to, and they are so appropriated.
3. Acts of Congress passed at the same session of Congress relating to the same subject are to be construed together. It is proper to go back of the date of approval of such acts; and if the one *first approved* was on a bill *last introduced* in Congress, this circumstance may be considered, in order to ascertain the purpose of Congress.

4. In construing acts of Congress to determine if they make an appropriation of money, the conclusion may be affected by the consideration whether it would make a *permanent* and *unlimited* appropriation, an *annual* appropriation, or only one for private relief.
5. If a permanent appropriation for an unlimited amount can result by inference from act of Congress, the language from which such inference is drawn must be clear and conclusive.

There are certain acts of Congress relating to the Louisville Canal, as follow:

“AN ACT to abolish all tolls at the Louisville and Portland Canal.

“*Be it enacted*, That after the first day of July, eighteen hundred and eighty, no tolls shall be charged or collected at the Louisville and Portland Canal, but the Secretary of War shall be authorized to draw his warrant from time to time upon the Secretary of the Treasury to pay the actual expenses of operating and keeping said canal in repair.

“Approved, May 18, 1880.”

“An act making appropriations for the construction, repair, completion, and preservation of certain works on rivers and harbors, and for other purposes”—approved June 14, 1880.

This provides, *inter alia*, that—

“The balance in hand, after payment of any existing liability, collected heretofore as tolls on the Louisville and Portland Canal, or which may hereafter be so collected prior to the passage of an act to make said canal free to the public, is hereby authorized to be expended for its improvement: *Provided*, Such expenditure shall not exceed sixty thousand dollars.”

It may be said, in explanation, that the act of June 14 was introduced in Congress *before* the bill which became the act of May 18, though passed after it; so that both acts, being passed at the same session, and relating to the same subject, *are* to be considered together, and, to a certain extent, with the dates reversed.

These facts may properly be considered. (Blake *vs.* National Banks, 23 Wall., 307.)

The Second Comptroller, in a letter to the Secretary of War, July 29, 1880, says he is of opinion—

“That all the money (collected as tolls) on hand at midnight on July 1, 1880, after payment of any existing liability, if not in excess of \$60,000, may be expended on the improvement of the canal.

“The acts might be so construed that we could use for improvements only the tolls collected prior to June 14, 1880. I do not see how we could be limited to the 18th May, as Major Weitzel suggests. But neither of these constructions, if possible, would, it seems to me, express the intention of the Congress; which appears fairly to be, that the tolls collected up to the time that the canal is made free from tolls, should, to a limited extent, be used as heretofore for improvements.”

On the 5th August, 1880, the Secretary of War asked the Attorney-

General for an opinion on the question, whether the act of May 18, 1880, "makes any appropriation of money for the operation and repair of that work."

The Attorney-General, in an opinion, August 14, 1880, after referring to the two acts, and the language thereof, above quoted, says:

"Your query is, whether the first act, of itself, appropriated money, and whether (if so) it is affected by the above-quoted clause of the latter act.

"The first act, in authorizing the Secretary of War to draw warrants from time to time upon the Secretary of the Treasury for the purpose indicated, empowered the latter to pay the warrants so drawn, by legal and almost necessary inference, as fully as if it had been expressly stated that they should be paid out of any moneys in the Treasury not otherwise appropriated.

"On comparing the two acts, it will be seen that the act of May 18, 1880, did not become operative so as to make the canal free until the first of July thereafter; and until that time tolls were to be charged and collected.

"The act of June 14, 1880, was apparently intended to provide for the disposition of the funds which would be collected before the canal became actually free, by ordering them to be expended in the improvement of the canal, provided such expenditure should not exceed \$60,000.

"After the canal became free, upon the first day of July, 1880, the Secretary of War was empowered to pay the actual expenses of operating and keeping it in repair, by warrant upon the Treasury which would operate, as before suggested, on any moneys not otherwise appropriated."

This is the entire argument of the Attorney-General, and all the reasons in support of this opinion which have been brought to the attention of the First Comptroller are herein stated.

The Secretary of War addressed an "accountable requisition," or warrant, on the Secretary of the Treasury, under the act of May 18, 1880, for \$5,000, "at this time" required "to pay the actual expenses of operating and keeping said canal in repair," which, on the 24th of August, was, by the Secretary of the Treasury, referred to the First Comptroller for his opinion whether an appropriation is made by act of May 18, 1880.

The "balance in hand" of tolls, after paying existing liabilities, did not reach \$60,000, but only about \$30,000.

The Chief of Engineers, in a brief, says the act of May 18, 1880—

"Provides that 'the Secretary of War shall be authorized to draw his warrant from time to time upon the Secretary of the Treasury to pay the actual expenses of operating and keeping said canal in repair.' That an appropriation of the necessary funds is implied in the above act seems to me to be clear, inasmuch as no such provision in the act of May 18, 1880, would have been necessary had there been an existing appropriation for operating and repairing the canal.

"It should be borne in mind that the River and Harbor Act makes no appropriation from the Treasury for the canal."

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

In giving construction to these acts, it is important to notice (1) the *character* of the appropriation, if one is made by the act of May 18, and (2) the *rule of construction* applicable to *such* appropriation act.

(1.) If this act makes an *appropriation* at all, it is a "*permanent specific appropriation*"—*indefinite as to time*, and *unlimited as to amount*. It may place the appropriation in a position where Congress cannot recall it except over a veto of the President.

(2.) As to appropriations which remove from the annual scrutiny of Congress the use of public money, the rule of construction must necessarily be, that, if they can exist by *inference* at all, the language from which such inference is drawn must be clear and conclusive. This is essential, to preserve the control of Congress over appropriations. Permanent indefinite appropriations, as a general rule, are against the spirit of the Constitution. (*Madre vs. Felton*, Phil. Law, N. C., 279.)

In view of all this, I am constrained to hold, for several reasons, that the act of May 18 carries with it no appropriation:

1. It is not by its *title* an appropriation act. This, though not a conclusive, is a strong circumstance against the idea that it was designed to make an appropriation. (*Beard vs. Rowan*, 9 Pet., 301.)

The act of Congress of August 26, 1842, (5 Stats., 536,) provides that—

"The style and title of all acts making appropriations for the *support of the government* shall be as follows, to wit: An act making appropriations (here insert the object) for the year ending June 30, (here insert the calendar year.)"

This provision is carried into the Revised Statutes, sec. 11.

If the act of May 18 makes an appropriation, it is for the support of the government; but as it is not under the title required by law, it is reasonable to infer that it makes no appropriation. Section 11 of the Revised Statutes is of course *directory*, and there will be appropriations made in acts without the requisite title, which will, nevertheless, be held as valid.

2. The title of the act seems to *negative* the idea of an appropriation. It is "An act to abolish all tolls at the Louisville and Portland Canal." There is no indication of a purpose to appropriate money.

3. *a.* The language employed in the body of the act is by no means the *usual* language of an appropriation act, which is—

"That there be, and is hereby, appropriated, to be paid out of any money in the Treasury not otherwise appropriated."

b. No equivalent words are employed in the act of May 18.

4. A conclusive reason against holding that the act of May 18 carries

an appropriation is, that the act of June 14 authorized an expenditure of a certain "balance," limiting it so as not to exceed \$60,000. This would have been unnecessary if the act of May 18 made an appropriation. It is true that the act of May 18 is prior in date to that of June 14; but this has already been explained. The act of May 18 evidently was passed in contemplation of an appropriation *thereafter to be made*, or of that provided for by the act of June 14, which was the *first* introduced in Congress, and to which that of May 18 referred as supplying the money on which the Secretary of War was to draw his warrant.

5. The act does say that—

"The Secretary of War shall be authorized to draw his warrant, from time to time, upon the Secretary of the Treasury to pay the actual expenses of operating and keeping said canal in repair."

a. It has been suggested that—

"No such provision would have been necessary had there been an existing appropriation for operating and repairing the canal."

There was an "existing appropriation;" that is, one expected, and which finally became such, by the act of June 14, when we consider the date of the introduction of the bills already mentioned.

It may be that the provision as to a warrant is superfluous. A superfluous word or expression may be rejected. (Richey's case, this vol., 85.)

I cannot perceive the logic of considering a verbal superfluity to have the force of, or draw to itself by implication, a positive law making an appropriation.

At most, this alleged superfluity only shows that Congress was careful to direct the agency by which appropriations were to be drawn upon.

b. If this language, as to a warrant, had been used in a relief act, as in the case of the Western and Atlantic Railroad of Georgia, act of March 3, 1877, (19 Stats., 402,) which provided for the payment of an outstanding indebtedness, there might be a strong presumption arising from all the circumstances of the case that the necessary appropriation was intended; but in this case we have an annual expenditure in no way differing from ordinary expenditures, which, by the construction sought to be given to this act, may be removed from the annual scrutiny of Congress, and continued indefinitely both as to *time* and *amount*. (Providence Hospital case, this vol., 82.)

The act of 1877, however, differs in important particulars from that of May 18, 1880:

1. The act of May 18, if it is to be deemed as making an appropria-

tion, is "for the support of the Government," and so falls within the Revised Statutes, section 11; while the act of 1877 was a private act.

2. The act 1877 required a warrant to issue "on the *Treasury of the United States*, to the Governor of Georgia, or his order, for *the amount of money it is found ought to be refunded*," &c. This contemplates payment.

The act of May 18 only authorizes a *requisition*, called "warrant," on the Secretary of the Treasury. It seems to contemplate a mode of applying such money as might be appropriated, and gives the Secretary of War a discretionary power to judge of the time, amount, and necessity of payment.

3. The act of 1877 is (1) temporary, (2) limited in amount, (3) to a defined person, (4) to meet an *admitted over-due* debt, (5) the payment of which was required upon every principle of justice, hence (6) where it might be reasonable to infer a purpose to pay, and (7) a refusal to do which would impute to Congress a neglect of duty.

The act of May 18 lacks every one of these elements.

4. The general *usage* to require *appropriations* before a warrant to pay can be made available is of significant import. Usage, as an element of construction, has great weight.

Analogy and authority, so far as can they be found, support the view now taken. (*State ex rel. vs. Treasurer*, 46 Mo., 326.)

Finally: The duty of executive officers to *preserve the powers of Congress unimpaired and free from encroachment by inference* must always have controlling weight in construing appropriation acts.

The Constitution says that "no money shall be drawn from the Treasury but in consequence of appropriations made *by law*." An inference, in order to have the force of law, should be very clear.

I have discussed this subject at such length, because I have deemed it incumbent on me, in reluctantly differing from and overruling—as this decision necessarily does—the opinion of so distinguished a lawyer as the learned and able Attorney-General, to set forth with some fullness the reasons which impelled me thereto.

I know it is important to the interests of commerce that the Louisville and Portland Canal should be kept in repair; but if, unexpectedly, the funds devoted to that purpose by Congress prove inadequate, it is not the province of executive officers to interpose a construction of statutes which might introduce infinite danger by way of precedent in the future.

Hard cases should not be allowed to make bad precedents.

The Secretary of War will doubtless consider whether there be any other appropriation available for keeping the canal in repair, such as that for "contingencies of rivers and harbors," &c.; concerning which I am not now called on to decide.

I am advised that my predecessor was, after some consideration, of the opinion that the act of May 18, 1880, did not make an appropriation; though he prepared no formal decision on the subject.

I hold that the warrant referred to is not "warranted by law." No money can be paid from the Treasury as having been appropriated by the act of May 18, 1880.

TREASURY DEPARTMENT,

First Comptroller's Office, September 15, 1880.

**IN THE MATTER OF APPROPRIATIONS FOR SHOPS AT ROCK
ISLAND ARSENAL, ETC.—ARSENAL CASE.**

1. The *general* policy of Congress in recent legislation has been to require the prompt use of money appropriated for public service, the speedy accounting therefor, and the return to the Treasury of unexpended balances. (Rev. Stats., 3690, 3691; 16 Stats., 251; 18 Stats., 110.)
2. That clause of section 3690 of the Revised Statutes which relates "to the fulfilment of contracts properly made during" any fiscal year, when taken in connection with the act of June 20, 1874, (18 Stats., 110, sec. 5,) only permits an annual appropriation to be applicable to such fulfilment for three years from the time when it first became available.
3. Appropriations made in annual appropriation acts for the service of any fiscal year can be applied only in paying expenses properly incurred during, or to the fulfilment of contracts properly made within, that year. (Rev. Stats., 3679, 3690, 3732; 16 Stats., 251.)*

*The Department circular of June 1, 1872, copies sections 5 and 7 of act of July 12, 1870, carried into sections 3679, 3690, of the Revised Statutes, and says:

"To comply properly with these provisions of law, it is necessary that moneys and accounts pertaining to one fiscal year shall not be blended with those belonging to another.

"Accounts for the quarter ending June 30, must embrace all compensation earned and all expenses incurred, up to and including that date, so that no charges for services performed, or articles purchased, prior to the 1st of July, shall appear in subsequent accounts.

"Where an officer is unable to close his account for the 30th of June, promptly, and, at the same time, meet all outstanding expenses properly chargeable to the appropriations for the preceding year, he will make regular supplemental accounts under the old appropriation, and will not carry the unexpended balance into his account with the new.

"Where a contract has been legally made, requiring payment out of any appropriation of the preceding year, officers are authorized to retain to their credit a sufficient amount of the old appropriation to meet the expenditure when it shall become due under the contract. In all such cases a supplemental account must be made, as provided in the previous paragraph.

4. Appropriations made for the several purposes named in the *proviso* to section 5 of the act of June 20, 1874, are available until used, or otherwise ordered by Congress.
5. Appropriations made for the several purposes named in said *proviso* are not to be extended beyond the fair and reasonable meaning of the words employed. Ambiguities are to be resolved in favor of annual, and against permanent, appropriations.
6. The words "public buildings" in the *proviso* to section 5 of the act of June 20, 1874, are not limited to those in charge of the Treasury Department, but include all public buildings to be erected under any Department.
7. Legislative provisions in an annual appropriation act, *clearly* general in their character, will not be restrained by the title of the act. (7 Op., 303.)
8. Armories and arsenals are "public buildings" within the act of June 20, 1874.
9. The appropriation for SHOPS at Rock Island arsenal, made by act of June 16, 1880, is an appropriation for "public buildings."
10. The appropriation made in the act of June 16, 1880, "for developing and maintenance of water-power" at Rock Island arsenal, is an *annual appropriation*, and is not an appropriation for "rivers and harbors," within the act of June 20, 1874, although it may incidentally improve the river or a harbor.

The following opinion was submitted to, and concurred in by, the First Comptroller of the Treasury, who accordingly prepared the syllabus thereof:

"TREASURY DEPARTMENT,
"Second Comptroller's Office, Washington, D. C., August 25, 1880.

"The Chief of Ordnance, through the Secretary of War, submits two questions for the consideration and decision of the Comptroller, namely:

"1. Whether the item in the Sundry Civil Act of June 16, 1880, making appropriation for shops G, H, and I, at Rock Island arsenal, does not come under the head of 'public buildings,' in the sense of the *proviso* to section 5 of the act of June 20, 1874, so as to continue available after the expiration of the fiscal year for which they were appropriated, and until otherwise ordered by Congress.

"As soon after the 1st of July as possible, and after having paid all liabilities incurred on behalf of the Government during the previous year, or having made suitable provisions for their payment by retaining a sufficient amount on hand or on deposit to their credit, officers should deposit to the credit of the Treasurer of the United States the balance remaining in their hands or to their credit, either with the Treasurer of the United States himself, some one of the assistant treasurers, or designated or national-bank depositaries, who will issue certificates of deposit in duplicate therefore, the original of which should be forwarded to the Secretary of the Treasury. This certificate should always specifically state the appropriation to be credited, and the fiscal year for which the appropriation was made.

"In making this deposit, care should be taken to provide, in the manner hereinbefore directed, for any outstanding checks which may be unpaid at the time.

"Supplemental accounts for expenditures under expired appropriations must be rendered either monthly or quarterly, as the rules of the office may require.

"Officers stationed at places remote from means of rapid communication, and holding public moneys in their personal possession, (which can only legally be done by permission of the Secretary of the Treasury,) are directed to report to the proper controlling officer the amount of this money belonging to the prior fiscal year, and the Comptroller will direct what disposition shall be made of it, and notify the officer accordingly."

"2. Whether the item in the same act, 'for developing and maintenance of water-power, \$50,000,' at said arsenal, does not come under the head of 'rivers and harbors,' in the same sense.

"The policy of the Government, and the purpose of Congress in its legislation on the subject, have been, of late years, to require the prompt use of money appropriated for the public service; the speedy accounting therefor, and return to the Treasury of unexpended balances. The act of July 12, 1870, required that 'all balances of appropriations contained in the annual appropriation bills, and made specifically for the service of any fiscal year, and remaining unexpended at the expiration of such fiscal year, shall only be applied to the payment of expenses properly incurred during that year, or to the fulfilment of contracts properly made during that year, and the balances not needed for such purpose shall be carried to the surplus fund. This section, however, shall not apply to appropriations known as permanent or indefinite appropriations.' (Rev. Stats., sec. 3690.)

"Afterwards, Congress, by the act of June 20, 1874, made a more general and stringent rule, but provided certain exceptions, namely:

"That * * * the Secretary of the Treasury shall cause all unexpended balances of appropriations which shall have remained upon the books of the Treasury for two fiscal years to be carried to the surplus fund and covered into the Treasury: *Provided*, That this provision shall not apply to (1) permanent specific appropriations, (2) appropriations for rivers and harbors, (3) light-houses, (4) fortifications, (5) public buildings, or (6) the pay of the Navy and Marine Corps, but the appropriations named in this proviso shall continue available until otherwise ordered by Congress,' &c. (18 Stats., 110, sec. 5.)

"The provisions of this section would in no way affect the act of 1870 aforesaid, (only to further restrict the use of annual appropriations to two years, even for the fulfilment of contracts,) except for the provision made in the last clause of the proviso—'the appropriations named in this proviso shall continue available until otherwise ordered by Congress.'

"The language and intention of this provision cannot be misunderstood. It makes the appropriations 'named in the proviso' to all intents and purposes permanent appropriations not subject to be carried to the surplus fund or covered into the Treasury, but always available; that is, capable of being used until otherwise provided by proper legislative enactment.

"In order, therefore, to answer the first question submitted by the War Department, it is only necessary to determine whether the appropriation of June 16, 1880, for the shops at Rock Island arsenal, is one of the appropriations named in the proviso of 1874; or, more specifically, whether it is an appropriation for 'public buildings' in the sense of that proviso.

"It appears that an impression prevails among the officers in charge of appropriations at the Treasury Department that the words 'public buildings' in the proviso are to be restricted so as to include only the public buildings in charge of the Treasury Department. No reason is adduced, none can be adduced, for such restricted use of the words.

"There is nothing in the language itself nor in the context; there is nothing in the title or purview of the act. It is the general legislative and executive appropriation act of 1875, and makes appropriation for all the Departments of the Government; there is nothing in the prior

or contemporary legislation on the subject which lends any support to such restricted and unnatural use of the words. When the War Department made formal application to the Committee on Appropriations to make special provision extending the time for use of the appropriation for Rock Island arsenal, the committee declined, for the reason, and only for the reason, that by the proviso to the act of 1874 the appropriations for that purpose had been made permanent, and no special provision was needed. This was the same committee of the same Congress that had drafted and reported the act of 1874, and their opinion is therefore valid.

"Congress has expressly recognized the arsenals as among the public buildings, uniformly uses the words 'public building' as applicable to all the public buildings of all Departments; and whenever special provision is made for the buildings of any particular Department, they are particularly described as such. Thus, in section 355 the armories and arsenals are expressly named and enumerated (together with the War, Navy, and Treasury-Department structures) as 'public buildings':

"No money shall be expended * * * for * * * any armory, arsenal, fort, fortification, navy-yard, custom-house, light-house, or other public building of any kind whatever, until,' &c.

"In section 3684, which applies to Treasury-Department buildings alone, they are so specially described: 'All appropriations for public buildings under the control of the Treasury Department, shall be available immediately,' &c. See, also, sections 1797, 1838, 3663, and 5503.

"It is my opinion, therefore, that the appropriations for public buildings at Rock Island arsenal, made after the 1st July, 1874, including the appropriation for shops H, I, and G, in the Sundry Civil Act of June 16, 1880, are available after the fiscal year for which they were made, and continue available until further ordered by Congress.

"As to the other question submitted by the War Department, namely, whether the item in the act of June 16, 1880, 'for developing and maintenance of the water-power,' does not come under the head of 'rivers and harbors,' as provided by section 5 of the act of June 20, 1874, I am of opinion that this appropriation does not come under the head of 'rivers and harbors,' as provided in section 5 of the act of 1874; that it is not embraced in any of the appropriations named in the proviso to that section, so as to be available after the year for which it is appropriated; that it must be used or expended under the provision of the act of July 12, 1870, section 3690 of the Revised Statutes.

"It may be true, as the ordnance officers state, that the navigation of the river will be improved by the use of this money in the manner contemplated, but the appropriation was not made for that purpose; it was not made 'for the improvement of the river.' It was made to develop and maintain the water-power at the arsenal; and if benefit or injury results to the navigation of the river, it is only incidentally, and aside from the main design and purpose of the appropriation.*

"Very respectfully,

"JAMES S. DELANO,

"Acting Comptroller."

TREASURY DEPARTMENT,

First Comptroller's Office, September 16, 1880.

*The "sundry civil" annual appropriation act of July 31, 1876, (19 Stats., 119,) appropriated a certain sum for "completing experiments in testing iron, steel, and other metals," &c.

A contract was made during the fiscal year, requiring test experiments, under

**IN THE MATTER OF FEES OF A DE FACTO COMMISSIONER
OF THE CIRCUIT COURT.—HUNTER'S CASE. .**

1. A *de facto* commissioner of the circuit court, holding under color of office and rendering services required by law, is entitled to the fees provided by law for such services.
2. An unlawful and unauthorized appointment to office does not give a right to the salary or fees of an office.

In January, 1879, the First Auditor reported to this office an account of W. H. Hunter, United States commissioner for the southern district of Alabama, for fees amounting to \$135 34. The account was disallowed by the Auditor on the ground that, Mr. Hunter being a resident of the middle district, he could not lawfully discharge the duties of a commissioner in any other district.

The law says: "Each circuit court may appoint, *in different parts of the district for which it is held*, so many discreet persons as it may deem necessary, who shall be called commissioners of the circuit courts." (Rev. Stats., 627.)

Mr. Hunter resides at Montgomery, in the middle district, and he holds the office of commissioner for that district. An agent of the Interior Department reported, in 1878, many violations of the laws for the protection of public timber. The persons accused were operating along the line which separates the southern from the middle district, and the United States district attorney for the southern district obtained in June, 1878, from the circuit court of said district, the appointment of Mr. Hunter as commissioner for said district.

which work was performed *during that* and the *next year*, and the Second Comptroller, Hon. W. W. Upton, gave an opinion, June 15, 1878, that the appropriation could be used in making payment for the work done in both years.

He said: "Another possible objection is, that payments have been made after the expiration of a fiscal year, under contracts made within the year. Uniform practice permits such payments. I find no statute prohibiting them. Inferentially they are authorized by section 3679, Revised Statutes, which provides that no Department shall expend, in any one fiscal year, any sum in excess of appropriations for that fiscal year, 'or involve the Government in any contract for the future payment of money in excess of such appropriations;' by section 3690, which permits balances unexpended at the expiration of a fiscal year to be applied 'to the fulfilment of contracts properly made within the year,' and by section 3732, which prohibits the making of a contract 'unless the same is authorized by law, or is under an appropriation adequate to its fulfilment.'

"I am of opinion that no objection will lie to payments made after the expiration of the fiscal year, under contracts not exceeding the appropriations, properly made within the year.

"I am of opinion, also, that where money is due for labor performed or materials furnished, and an account therefor is duly audited and certified by the accounting officers before the time arrives for covering the unexpended balance into the Treasury, the amount so certified may be paid after that time, and should not be included in the balance carried to the surplus fund." (See 13 Op., 288; 18 Stats., 418.)

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The appointment was made when the court was held by Hon. John Bruce, who is the judge of the United States *district* courts in the three judicial districts of the State. When the objection made by the Auditor was brought to the attention of Judge Bruce, by a letter from Mr. Hunter, the Judge wrote on the back of the letter:

"The power exists under section 627, Revised Statutes U. S. Observe that the statute does not require the appointees to be residents of the district, unless it should be held by construction that the words 'in different parts of the district' mean that the persons shall be residents of the district."

At the June, 1879, term, on the suggestion of the United States attorney that this appointment of Mr. Hunter was informal and irregular, the circuit court vacated the appointment, and ordered that any proceedings pending before him be transferred to the regular commissioner for the southern district.

The question arises, whether the account of Mr. Hunter for the services rendered under the appointment as commissioner shall be allowed?

DECISION BY WILLIAM LAWRENCE, *First Comptroller* :

The *definition* of a *de facto* officer is fully discussed in *State vs. Carroll* by the Supreme Court of Errors of Connecticut, (12 Am. Law Reg., N. S., 165,) which is a leading and well-considered case; and it is shown that the official acts of such officer are valid as respects the public and third persons. (See, also, Electoral-Commission Proceedings, 149 Cong. Rec., vol. 5, part 4, 44th Cong., 2d session.)

The question whether a *de facto* officer is entitled to receive from the Government the salary or fees prescribed by law for the time he serves, has generally arisen *in cases where there were rival claimants to the office*.

In the case of *Auditors vs. Benoit*, 20 Michigan, 183, it is said—

"There can be no consistent theory, except that which regards official rewards as the recompense for actual or implied official work. Nor would it be possible, in most cases, to have the work done without some certainty of pay for it. An officer is not to be expected to work for nothing, so long as it may please his enemies to assume to doubt his title. There is very good reason why he should be compelled to respond to the rightful claimant who would have been glad to fulfil the conditions. But the law assumes that the laborer is worthy of his hire, and the person who is required to be recognized for the time being, as the legal incumbent for the purpose of doing the work, should be recognized for the purpose of remuneration also, so far as those are concerned with whom he deals officially, and who have no personal interest in the contest for the office."

There are cases which seem to support this view. (Connor *vs.* Mayor, 5 N. Y., 285; s. c., 1 Seld., 285; Baker *vs.* City, 19 N. Y., 326; Smith *vs.* Mayor, 37 N. Y., 518; s. c., 1 Daly, C. P., 219; People *vs.* Brennan, 1 Abb. N. Y. Pr., n. s., 184; Queen *vs.* Mayor, 12 Ad. & El., 702; Merriam, Adm'r, *vs.* Clinch, 6 Blatchf. C. C., 5; 5 Op. Att'y-Gen'l, 768; 4 Ohio St., 561; 4 Wheat., 627; 1 Hill, 8; 2 Denio, 272; 3 Pars. Cont., 529; 6 How., 548; 10 *Ib.*, 402; Derry *vs.* Mayor, 39 Barb., 169; Cannif *vs.* Mayor, 4 E. D. Smith, 430; Lynch *vs.* Mayor, 25 Wend., 680.)

An officer *de facto* is liable in certain cases to the rightful claimant. (1 Comyns' Dig., 287; 6 Taunt., 681; 6 Mees. & W., 639; 1 Scott, 539.)

There are cases which deny the right of an officer *de facto* to the salary of the office. (People *ex rel.*, &c., *vs.* Smyth, 28 Cal., 21; People *vs.* Tieman, 8 Abb. N. Y. Pr., [O. S.,] 359; People *ex rel.* *vs.* Brennan, 30 How. N. Y. Pr., 417; Wilcox *vs.* Smith, 5 Wend., 231; People *vs.* Miller, 24 Mich., 458.)

An officer cannot collect his fees, or claim any rights incident to his office, without showing himself to be an officer *de jure*. (*Ob. dic.* State *vs.* Carroll, Butler, C. J., 12 Am. Law Reg., n. s., 178.)

Whatever may be the correct rule where there are rival claimants to an office, it seems just and in conformity with principle to hold that, as to "commissioners of the circuit courts," the number of which officers is not limited by law, and as to which office there can be no rival claimant, a *de facto* officer who actually renders service to the Government is entitled to the fees therefor. A sufficient reason is, that the Government can never be called on to pay any other claimant. It is sometimes said that the right to salary depends on the right to the office, and not its mere occupancy. But, after all, the reason is that there is a rightful claimant to the salary, and the Government should pay but once.

When an office is in *abeyance* under the Revised Statutes, section 1769, and cannot be lawfully filled, an incumbent under an appointment improperly made cannot claim the salary of the office. (See letter of Attorney-General to the Secretary of the Treasury, April 4, 1878.)

The account of Mr. Hunter, for the fees in question, is allowed.

TREASURY DEPARTMENT,

First Comptroller's Office, September 18, 1880.

IN THE MATTER OF THE APPOINTMENT OF A DISBURSING AGENT AD INTERIM.—BIRCH'S CASE.

1. The Secretary of the Treasury has no authority to designate any person or officer as a "special agent" to discharge the duties of a "disbursing clerk" for the "Department of the Treasury" during the disability by sickness of such clerk.
2. Construction given to Revised Statutes, sections 176, 183, 235, 255, 3614, and legislative appropriation act of June 15, 1880.
3. When a statute makes provision for the performance of a specified class of duties, another statute in general terms will not be construed as authorizing the performance of the same duties through another agency, unless this purpose be expressed in clear language.
4. The "special agents" authorized by the Revised Statutes, 3614, are designed for duties other than those devolved on disbursing clerks authorized by law.
5. As to the construction of the Revised Statutes, sections 3152 and 3463, *quære?*
6. When and how another officer may be appointed to discharge the duties of one sick or absent. (Rev. Stats., 177, 178, 179.)

The statute authorizes the Secretary of the Treasury to appoint, for "the Department of the Treasury," two "disbursing clerks," and other disbursing clerks for the office of the Second Auditor, Register, &c. (Rev. Stats., 176, 235; legislative appropriation act June 15, 1880.)

There are two disbursing clerks for the Treasury Department now in office under this authority, including Bushrod Birch, who is temporarily disabled by sickness.

Section 255, Revised Statutes, authorizes the Secretary of the Treasury to designate any officer who has given a bond for the faithful discharge of the duties to be disbursing agent for the payment of moneys appropriated for the construction of public buildings.

Section 14, act of August 4, 1854, (sec. 3614, R. S.,) enacts that—

"Whenever it becomes necessary for the head of any Department or office to employ special agents, other than officers of the Army or Navy, who may be charged with the disbursement of public moneys, such agents shall, before entering upon duty, give bond in such form and with such security as the head of the Department or office employing them may approve."

The following has been presented to the First Comptroller for decision:

"TREASURY DEPARTMENT,

"Office of the Secretary, Washington, D. C., September 16, 1880.

"Has the Secretary of the Treasury power, under section 3614, R. S., to designate a clerk or officer of the Treasury Department as a 'special agent' and assign him to the duties of a disbursing agent of the Department during the present disability of Bushrod Birch, on account of sickness?

"If so, in what amount shall he give bond?

"J. T. POWER, *Chief Clerk.*"

DECISION BY WILLIAM LAWRENCE, *First Comptroller* :

When a statute creates an office with specified duties, or adds a specific duty to those already charged on an officer, the reasonable presumption is that this is the only provision intended to be made on the subject.

Congress may, however, by law, give to an agent the power to perform a portion of the duties already assigned to another officer; but a statute should not be construed to have this effect unless the purpose be expressed in clear language.

If the laws be contemporaneous which authorize the same duties to be performed by officers or agents designated by different names, it would require clear language to indicate such a purpose, because it is not reasonable to suppose that Congress, in the same act or contemporaneous acts, would express the same purpose in different and separate terms, or provide duplicate agencies to accomplish one object. (Bac. Ab., Stats., 1; Potter's Dwaris, Stats., 274; 3 Gray, 450; 32 Eng. L. and Eq., 84; 4 Sandf., Ch. 633; 13 Ill., 15; 21 Vt., 256; 3 Wash. C. C., 209; Sedgwick Stats., 221; 1 Pick., 261.)

The King's Bench said, in *Reg. vs. Conway*, 6 Ad. & El., 69:

"We disclaim altogether the assumption of any right to assign different meanings to the same words in an act of Parliament." (Vattel, Book 2, ch. 17, p. 285; *Robbins vs. Omnibus*, 32 Cal., 472.)

Thus it is said that—

"Where an act of Parliament gives authority to 'one' person expressly, all others are excluded." (Potter's Dwaris, 275; 11 Rep., 59, 64.)

If a new law is claimed to effect such object, it must do so in clear terms, because it is a modification of a prior law, and such modification is in some sense a repeal by implication, which is not favored.

There is no appropriation out of which a special agent could be paid. As to many of the officers of the Government, provision is made for the discharge of their duties in case of absence or sickness; but, as to the disbursing clerk now under consideration, there is no authority for appointing, *in the mode now proposed*, another officer to perform his duties. (Rev. Stats., 177, 178, 179.)

Section 3614 of the Revised Statutes is intended to apply to a totally different service.

Under appropriation acts requiring investigations at distant points, or the expenditure of contingent funds away from the Department, or sometimes under other laws, it will frequently be "necessary for the head of a Department or office to employ special agents," and to charge them "with the disbursement of public moneys."

If several agents be requisite to execute the purpose of an act of Congress, one, of course, may be charged with the duty of disbursing money. So, one only may be sufficient sometimes to perform all the duties.

In these cases, section 3614 does *not give the authority* to appoint; but when such authority is *otherwise given* expressly or by necessary implication, and its execution requires the disbursement of public money, this section provides that the disbursing agent shall give bond "in such form and with such security as the head of the Department, or office employing him, may approve." (See sec. 183.)

The question, when the incidental power to appoint agents exists, must be determined on the circumstances of each case. (Floyd Acceptances, 7 Wall., 672, 680; U. S. *vs.* Bank Metropolis, 15 Pet., 377; Broom, Leg. Max., 491; Co. Litt., 152, *a.*)

A somewhat similar question, and which has not been finally decided, has arisen under the Revised Statutes, sections 3152 and 3463; the latter of which, it has been urged, was designed to supersede the moiety system.

In view of the principles stated above, I hold that there is no authority to designate any person or officer as a special agent to discharge the duties of a disbursing clerk of the Treasury Department. While the two disbursing clerks authorized by law remain in office, they alone can discharge the duties required of them.

TREASURY DEPARTMENT,

First Comptroller's Office, September 20, 1880.

For convenience, the following forms, in use in the Treasury Department, are appended:

Section 3614, Revised Statutes.

"Whenever it becomes necessary for the head of any Department or office to employ special agents, other than officers of the Army or Navy, who may be charged with the disbursement of public moneys, such agents shall, before entering upon duty, give bond in such form and with such security as the head of the Department or office employing them may approve."

General Instructions for Executing the within Bond.

1st. The christian names must be written in the body of the bond in full, and so signed to the bond.

2d. Each signature must be made in the presence of two persons, who must sign their names as witnesses.

3d. A seal of wax or wafer must be attached to each signature.

4th. Sureties must justify in amounts aggregating twice the penalty of the bond.

5th. The affidavits of sureties, if not taken before a judge, or clerk of a United States court, or United States commissioner, must be accompanied with the certificate of a clerk of a court of record, sealed with the seal of the court, that the person has authority to administer oaths.

6th. The residence and post-office address of the principal and of each surety and witness must be distinctly stated.

This bond must be executed and filed with the proper officer of the Treasury before any money can be drawn thereon.

Know all men by these presents, That we, _____, of _____, as principal, and _____, of _____, and _____, of _____, as sureties, are held and firmly bound unto the United States of America in the sum of _____ dollars, lawful money, to be paid to the said United States; which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this _____ day of _____, in the year of our Lord one thousand eight hundred and seventy_____.

The condition of the foregoing obligation is such, That whereas the Secretary of the Treasury has, pursuant to law, constituted and appointed the said _____ a disbursing agent for the Treasury Department:

Now, therefore, if the said _____ shall well and truly execute and discharge all the duties of said office of disbursing agent according to the laws of the United States and the regulations of the Treasury Department made in conformity therewith, safely keeping and correctly paying out all sums of public money advanced to him, or coming into his hands from time to time, without loaning, using, depositing in bank, or exchanging for other funds than as allowed by law, then this obligation to be void and of none effect; otherwise, to remain in full force and virtue.

_____.

[Seals must be of wax or wafer.]

Signed and sealed in presence of—

_____.

_____, } ss:
_____.

I, _____, of _____, being duly sworn, depose and say that I am the surety of _____, who has been appointed a disbursing agent of the United States Treasury Department, and that I am worth the sum of _____ dollars over and above all just debts and liabilities for any cause whatever, to the best of my knowledge and belief.

Sworn to and subscribed before me, this _____ day of _____, A. D. 18—.

_____, Notary Public.

_____, } ss:
_____.

I, _____, of _____, being duly sworn, depose and say that I am the surety of _____, who has been appointed a disbursing agent of the United States Treasury Department, and that I am worth the sum of _____ dollars over and above all just debts and liabilities for any cause whatever, to the best of my knowledge and belief.

Sworn to and subscribed before me, this _____ day of _____, A. D. 18—.

_____, Notary Public.

I certify that the above-named sureties are personally well known to me, and that they are sufficient for the penalty thereof.

_____,
_____.

[Indorsement.]

Bond of _____, disbursing agent of the Treasury Department,
for \$_____, dated _____, 18—.

TREASURY DEPARTMENT, _____, 18—.

Respectfully referred to the Solicitor of the Treasury (Department of
Justice) for examination.

_____, *Chief Clerk.*

DEPARTMENT OF JUSTICE,
Office Solicitor of the Treasury, _____, 18—.

Examined and found correct:

_____, *Solicitor.*

Approved: _____, 18—.

_____,
Secretary of the Treasury.

TREASURY DEPARTMENT, _____, 18—.

Respectfully referred to _____, for file.

_____, *Chief Clerk.*

IN THE MATTER OF DRAWBACK CERTIFICATES OF THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA.— DRAWBACK CASE.

1. Drawback certificates under the act of Congress of June 27, 1879, are required to be signed by a majority of the Commissioners of the District.
2. The duty of the Commissioners to revise and correct assessments, and issue drawback certificates, cannot be by them delegated to a clerk or other officer or person.
3. For convenience, schedules may be made of drawback certificates, and these, duly certified, can be received by the accounting officers on the principal, *id certum est, quod certum reddi potest.*

DECISION BY WILLIAM LAWRENCE, *First Comptroller:*

TREASURY DEPARTMENT,

First Comptroller's Office, Washington, D. C., September 21, 1880.

SIR: I have the honor to acknowledge the receipt of your letter of the 9th instant, transmitting therewith copies of letters addressed by you to the Commissioners of the District of Columbia, under date of April 1 and July 18, 1880, and the reply of the President of said Commissioners thereto, under date of August 5, 1880; in which you requested a decision from me, as to whether the drawback certificates

issued upon the revision of erroneous assessments under section 3 of the act of June 27, 1879, should be signed by the Commissioners of the District of Columbia, or a majority of them.

The act referred to provides that the Commissioners of the District of Columbia are authorized and directed, upon written complaint being made to them by any person or persons who had, prior to June 19, 1878, paid their special-improvement taxes, prepared under an act of the legislative assembly of said District, of August 10, 1871, that their said assessment or assessments were erroneous or excessive, to revise and correct such assessments so complained of; and in case the amount of any such assessment should be found to be erroneous or excessive, it is provided that the Commissioners shall issue to the person entitled to the same a drawback certificate to the amount of such excessive or erroneous charge; which certificate shall be received in payment of all special assessments and for all general taxes due before the 1st day of July, 1877.

Without undertaking to decide what may be evidence of official acts by the Commissioners of the District of Columbia, under other statutes; it is quite clear that the drawback certificates to be issued under the act of June 27, 1879, are required to be signed by at least a majority of the Commissioners. This is so clear, upon well-settled principles of law, that it can scarcely be necessary to prepare an extended opinion or cite authorities in support of it. If, however, authorities may be deemed necessary, some of them will be found in an opinion which I have had the honor to prepare, and which has been printed under the title of "Moyer's case;" a copy of which will, in due time, be furnished to you.

It may be an onerous duty for the Commissioners to sign numerous drawback certificates; but it is much less burdensome than the duty imposed upon them to revise and correct the assessments, and to ascertain whether they were erroneous or excessive; yet this duty is imposed upon the Commissioners by the act of June 27, 1879. It is a duty which cannot be delegated to any clerk, but must be performed by the Commissioners in person; and the drawback certificates must be issued as the result of their judgment in each particular case, though, of course, they may be aided in any proper way in procuring the evidence upon which their determination may be based.

It is understood that the drawback certificates referred to are somewhat numerous, and that they have been signed by a clerk, without the signature of either of the Commissioners. I understand that it is desirable, if practicable, for the purpose of relieving the Commissioners

of the duty of signing their names in a multitude of cases, that schedules of the certificates should be prepared, and that these be certified and signed.

The act of June 27, 1879, only authorizes certificates to be received in payment of all special assessments and for all general taxes due before the 1st of July, 1877, which are issued in conformity with the law; but as to certificates which had been issued prior to the date of your letter to the Commissioners of the 1st of April, 1880, schedules may be made with a convenient number of drawback certificates thereto attached, and a proper certificate may be made and appended to each of the schedules, and signed by the Commissioners, or a majority of them.

Official acts may be authenticated by two of the three Commissioners at any regular meeting, or at a special meeting of which all were duly notified.

The certificates to be appended to the schedules should, however, show that the Commissioners, themselves, revised and corrected the assessments complained of, and found them respectively erroneous, and that the drawback certificates are severally issued by them to the persons entitled to the same; and, in other respects, show a compliance with the act of June 27, 1879.

I feel disposed, as I know you do, to do all that the law will warrant, to promote the convenience of the Commissioners of the District. Under the circumstances, the course now suggested is allowable.

I have the honor to be, very respectfully,

WILLIAM LAWRENCE,

Comptroller.

Hon. R. M. REYNOLDS,

First Auditor of the Treasury.

IN THE MATTER OF THE GOVERNMENT PRINTING OFFICE. MESSENGER'S CASE.

1. The Government is not liable for the torts of its officers or agents. Hence,
2. When a messenger, employed by the Superintendent of the Government Printing Office, has by his wrongful acts caused the death of a horse hired for the public service, the owner of the horse has no legal claim on the Government by reason of the loss.
3. The agent is personally liable for his tort to the owner of the horse.

In 1879, the Superintendent of the Government Printing Office, in pursuance of authority conferred upon him by act of Congress, hired a horse from a resident of the District of Columbia for a compensation

agreed upon, to be used by a messenger of the office. The messenger wrongfully maltreated the horse, by reason of which he died.

The question, whether the owner of the horse can be paid the reasonable value thereof out of moneys appropriated for the general purposes of the Government Printing Office, is now submitted to the First Comptroller by the Superintendent of that office.

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

The messenger whose wrongful acts caused the death of the horse is clearly liable to the owner thereof for his value. The Government is not responsible for the torts or wrongful acts of its officers or agents. This has been repeatedly determined by the Supreme Court of the United States.

The exemption of the Government from liability rests upon the well-settled principle that a wrong cannot be imputed to it. This principle is derived from the English common law, and is equally applicable in this country as in Great Britain. It is a rule of public policy, and its maintenance is indispensable to secure the public interests. If the Government could be held responsible for the torts of its officers, it would be involved in many liabilities, and citizens would, in many cases, feel relieved of the obligation to aid in preventing or detecting wrongful acts of officers or agents. If the Government should be held liable for torts of this character, the result would be, frequently, to invite their commission, which might be made to inure to the benefit of parties making claims against the Government.

It is said in Broom's Legal Maxims, page 62:

"The ordinary maxim, *Respondeat superior*, has, then, no application to the Crown, for the Crown cannot, in contemplation of law, command a wrongful act to be done. It may be stated, moreover, as a rule of the common law, that the Crown cannot be prejudiced by the laches or acts of omission of any of its officers."

It is unnecessary to quote authorities, for the principles stated are universally recognized.

The Government cannot pay for the horse.

TREASURY DEPARTMENT, .

First Comptroller's Office, September 24, 1880.

IN THE MATTER OF APPROPRIATION FOR UNITED STATES AND MEXICAN COMMISSION.—ASHTON'S CASE.

1. The act of April 7, 1869, (16 Stats., 8,) made an appropriation to pay the salaries, expenses, advances, &c., mentioned therein.
2. It was a "permanent specific appropriation" as to its objects, and *indefinite* in amount.
3. The act of July 12, 1870, (16 Stats., 250,) which repealed that of April 7, 1869, (16 Stats., 8,) to take effect "from and after June 30, 1871," did not take away the appropriation made by it for payment of services rendered under it to June 30, 1871. It is unreasonable to suppose that Congress would legislate to deny rights fixed by law.
4. The repeal took away any right to pay under the act *after* June 30, 1871.
5. A sum of *one cent* due claimant will not be reported by the Secretary of the Treasury to Congress for an appropriation. *De minimis non curat lex.*
6. For services rendered under the act of April 7, 1869, up to June 30, 1871, there is no law authorizing the Secretary of the Treasury to report a claim to Congress for payment.
7. Construction given to act July 12, 1870, (16 Stats., 251,) Revised Statutes, 236, 266, 377, 3690, 3691; act of June 20, 1874, (18 Stats., 110;) and act June 14, 1878, (20 Stats., 130.)
8. The mere letter of a statute may be disregarded where it is *clearly* inconsistent with the real purpose of the law-making power.
9. Claims can only be reported to Congress under (1) *annual* or (2) *permanent annual* appropriations; but the claims which may be reported include those arising under *indefinite* as well as *definite* annual and permanent annual appropriations.
10. A "permanent specific appropriation" may be (1) *specific in amount* or (2) *indefinite in amount*.
11. The act of June 20, 1874, (18 Stats., 110,) has taken away the power which the Secretary of the Treasury would otherwise have to carry to the surplus fund and make retransfers, in case of necessity, of unexpended balances, when no longer needed, of permanent specific appropriations *specific in amount*.
12. The duty of auditing officers to examine demands for the payment of which there is no appropriation, considered.
13. When the First Comptroller has erroneously decided that there is no appropriation applicable to the payment of a claim, it is an *error in law* which will authorize the Secretary of the Treasury to reopen the decision, if there be no other legal remedy provided and existing to secure payment.

TREASURY DEPARTMENT,
First Comptroller's Office,
Washington, D. C., January 6, 1876.

SIR: Your accounts of compensation have been adjusted as follows:

From June 23, 1869, to June 30, 1871, per report No. 76,950; balance due to you.....	\$176 53
From July 1, 1871, to June 30, 1872, per report No. 76,951; balance due from you.....	\$5 98

From July 1, 1872, to June 30, 1873, per report No. 76,952; balance due to you.....	\$0 01
From July 1, 1873, to June 30, 1874, per report No. 76,953; balanced.	
From July 1, 1874, to June 30, 1875, per report No. 76,954; balanced.	
From July 1, 1875, to December 31, 1875, per report No. 76,955; balance due to you	2,000 00
Total balance in your favor.....	2,176 54
Balance against you.....	5 98
Actual balance due to you.....	2,170 56

The balance of \$176 53 and 1 cent are not available, however, as the unexpended balances of the appropriation from which you are paid for those years have been carried into the surplus fund. The actual balance due to you June 30, 1873, is \$170 56, as is shown by the above statement, which can only be paid to you after Congress shall make a special appropriation for that purpose.

Very respectfully,
R. W. TAYLER, *Comptroller.*

J. HUBLEY ASHTON, Esq.,
*Agent of the United States
American and Mexican Commission, Washington, D. C.*

On September 14, 1880, Ashton, by his attorney, Randolph Coyle, addressed a letter to the Secretary of State, requesting him to include the amount due Ashton in his "estimate of appropriations to be made for" the State Department by Congress.

On the 16th September the Secretary of State sent a copy of this letter to the Secretary of the Treasury, with a request to verify the account.

On the 18th of September the Secretary of the Treasury referred these to the First Comptroller "for information as to whether the enclosed statement of account of J. Hubley Ashton is correct, and, if so, whether the balance found due will be certified to Congress at its next session for an appropriation, under the provisions of section 4 of the act of June 14, 1878."

Randolph Coyle, for claimant, filed a brief before the Comptroller, claiming that the appropriation is specific, and yet applicable; is not repealed as to any of the salary except as to the *one cent* accruing after June 30, 1871. He claimed—

"That none of these statutes, as to covering in of unexpended balances, have any bearing upon the case. They all relate to specific annual appropriations of *fixed amounts*, the unexpended balances of which can readily be ascertained after the lapse of two years from the end of the fiscal year for which they were made, and which are included in the Secretary's 'surplus-fund warrants,' and actually carried back into 'the general treasury;' whereas the appropriation out of which the claimant, Ashton, should be paid, was an '*indefinite appropriation*' in terms; an appropriation of 'any moneys in the Treasury not otherwise appropriated,' and virtually an appropriation of ALL moneys in the Treasury

not otherwise appropriated. Its 'unexpended balance' has never been ascertained, because it is unascertainable. It has never been 'covered into the general treasury,' because it is, in fact, 'the general treasury.' It is not such a balance as should be reported by the Secretary to the Speaker of the House for reappropriation, because it is not such a balance of an appropriation as has been either 'exhausted or carried to the surplus fund;' but it is a balance due for services rendered, and is now payable out of 'any moneys in the Treasury not otherwise appropriated, without further legislation.' (See this volume, p. 69.)

* * * * *

"There is no difficulty in authorizing payment to Mr. Ashton, upon the customary requisition of the Department of State, of \$176 53, the balance due him up to June 30, 1871, upon receipt of which he will deposit to the credit of the United States on account of the appropriation for salaries of United States and Mexican Claims Commission for year ending June 30, 1872, the sum of \$5 98. Or, if deemed preferable, there may be paid to him the net amount of \$170 55, although it occurs to me that the first-named plan is the more regular.

"As to the balance of one cent due Mr. Ashton on salary for fiscal year ending June 30, 1872, he is willing to pass it to 'profit and loss,' or it might be reported to the Speaker of the House, under section 4, act of June 14, 1878, and paid under special appropriation."

—

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

(1.) The services for which payment of \$176 53, less \$5 98—balance due, \$170 55—is asked, were rendered prior to June 30, 1871, and while the act of April 7, 1869, (16 Stats., 8,) was in force.

(2.) The balance of *one cent* is due on services rendered since June 30, 1871.

As to this *one cent*, there is clearly no existing appropriation for its payment.

The third section of the act of April 7, 1869, (16 Stats., 8,) "to carry into effect the convention of July 4, 1868, between the United States and Mexico, for the adjustment of claims," provides—

"That the President be, and hereby is, authorized to appoint a suitable person as agent on behalf of the United States to attend the commissioners to present and support claims on behalf of this Government, to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof; the compensation of such agent, not to exceed four thousand dollars, shall be determined and allowed by the President; and the President is hereby authorized to make [such] provision for the contingent expenses of the commission and for the advances contemplated by the sixth article of the convention as to him shall appear reasonable and proper. The salaries, expenses, advances, and the compensation to be paid to the umpire, when determined, shall be paid out of any moneys in the Treasury not otherwise appropriated."

This act made an appropriation. This was one of its purposes. It

has been so recognized and treated. It is so declared in the act of July 12, 1870, (*McCauley vs. Brooks*, 16 Cal., 11.) But the fourth section of the legislative appropriation act of July 12, 1870, (16 Stats., 252,) declares—

“That the appropriations made by the following parts of acts and resolutions be, and the same are hereby, repealed, to take effect from and *after June 30, 1871*, viz:

“Section five of the act of June 26, 1848, being an appropriation for the salaries of special examiners of drugs, medicines, chemicals, &c., and said salaries shall, from and after June 30, 1870, be paid from the appropriation for collecting the revenue from customs.

“Section four of the act of July 20, 1867, being an appropriation for the pay and expenses of the commissioners under the treaty between the United States and the Republic of Venezuela.

“Section two of the act of June 27, 1864, being an appropriation for the pay and expenses of the commission under the treaty between the United States and her Britannic Majesty for the settlement of the claims of the Hudson's Bay and Puget Sound Agricultural Companies.

“Section three of the act of April 7, 1869, (16 Stats., 8,) being an appropriation for the pay, expenses, and advances on account of the commission under the treaty of the United States and the Republic of Mexico.

“Section thirteen of the act of July 28, 1866, being an appropriation for salaries and contingent expenses of the Bureau of Statistics.

“Sections one and seven of the act of March 3, 1849, being an appropriation to pay for horses, mules, &c., lost or destroyed while in the military service.

“Section one of the act of July 27, 1861, being an appropriation for refunding to States expenses incurred in raising volunteers during the late rebellion.

“And hereafter it shall be the duty of the proper department to submit estimates for the expenses and expenditures under these several heads, in the usual manner.”

This repeals the appropriation for the payment of services rendered by Mr. Ashton since June 30, 1871. The item of *one cent* for services so rendered cannot be paid.

Standing alone, it can scarcely be supposed that it is expected that this will be reported to Congress for an appropriation; the maxim may well apply, *De minimis non curat lex*.

The Secretary of the Treasury can, by virtue of his general power, order entries to balance the books of the Department. The more important question is, whether the sum of \$170 55 for services rendered prior to the repeal of June 30, 1871, and after the act of April 7, 1869, can be paid, or should be reported to Congress for an appropriation?

This presents several questions:

First. Is the third section of the act of April 7, 1869, repealed as to the appropriation for services prior to June 30, 1871?

Second. Does the act of April 7, 1869, make “a permanent specific

appropriation" for services rendered until the repeal thereof took effect, June 30, 1871?

Third. Can the claim be reported to Congress for an appropriation?

Fourth. Has there been such a decision of the *right* of the claimant to payment, or of his remedy, as precludes inquiry on those questions?

I.—The third section of the act of April 7, 1869, is not repealed as to the appropriation made for services prior to June 30, 1871.

1. The repealing act of July 12, 1870, made the repeal of the act of April 7, 1869, take effect *in futuro*—on the 30th June, 1871—nearly a year after the date of the repealing act. The appropriation made by the act of 1869 was *saved from repeal* for this period for *some purpose*. For what? Evidently that services rendered, up to June 30, 1871, *should be paid for by virtue of the act of 1869*.

This gives character and purpose to the repeal, as intending only to require annual appropriations *thereafter*.

2. This construction is required to save Congress from the imputation of requiring services under an act of Congress which made provision for payment therefor, and then taking away the means of paying.

It would give a *prospective* repeal a *retroactive* effect, so inconsistent with justice that it is not possible to attribute to Congress such purpose.

A similar question was considered in the matter of Metropolitan Police Force, this volume, 69. (Cooley's Const. Lim., 237, 275, 357; 20 Wall., 179.)

II.—The third section of the act of April 7, 1869, (16 Stats., 8,) makes "a permanent specific appropriation" as to services up to the repeal taking effect June 30, 1871.

1. The Secretary of the Treasury, in his decision of April 20, 1877, "in relation to the use of appropriations for the payment of accrued claims," refers to the fifth section of the act of June 20, 1874, above quoted, and says:

"The only exceptions that it is material now to notice are the first and fifth.

"The first exception is, 'that this provision shall not apply to permanent specific appropriations.'

"A *specific appropriation* is one where the amount, the object, or the person is designated particularly or in detail. It may be, and usually is, permanent in terms, because not limited as to time, like an annual appropriation; but there is a wide distinction between a *permanent specific appropriation* and a permanent annual appropriation.

"A permanent annual appropriation contemplates that a liability will accrue in the future, from time to time, and that when it accrues it may be paid from the Treasury, subject to the same general laws as to time,

place, and manner that apply to other annual appropriations. Any other construction would permit the most dangerous abuses by allowing the payment from a permanent appropriation of a claim that in any court would be barred by the lapse of time.

"The mere fact that an appropriation is, in form, a permanent [permanent annual, I suppose, is intended.—*Comptroller*] appropriation, instead of the usual annual appropriation, should not give it greater force or take it out of the general rules as to appropriations. Such an appropriation, from the nature of it, may not in form be covered into the Treasury, but a claim ought not to be paid out of it at a different time nor be passed upon in a different mode than if it were payable out of a current annual appropriation. A claim for captured cotton, or for a mule, or horse, or steamboat lost in the public service, should have no preference over a claim for salary not presented in time. It is no hardship to refer such claims to the Court of Claims.

"To expand an exception in favor of a specific appropriation, so as to cover all permanent appropriations, would be to defeat the plain intent of the law. These permanent annual appropriations are contained in sections 3687, 3688, and 3689, Revised Statutes. They include, among others, the appropriation for the expenses of the collection of the revenue from customs, which is an appropriation in a permanent form of a fixed sum for the service of each fiscal year. They include the appropriation for the interest on the public debt, which is also, in form, a permanent appropriation annually, out of the customs revenue, of a sum fixed by the public securities.* They include, also, a multitude of permanent indefinite appropriations declared to be permanent annual appropriations. An amount necessary for each year in the future, for certain purposes, is authorized to be taken from the Treasury, and these annual appropriations are subject to the same rules, limitations, and qualifications as the usual annual appropriations made by Congress. Any other construction of the act would defeat its object. Money would be taken from the permanent annual appropriation for horses and steamboats lost in the public service, and applied to pay for horses lost twenty years ago; money would be taken from the appropriation for collecting the customs, and used for the payment of claims that accrued twenty years ago, and for the interest thereon. Thus old claims would be paid out of permanent annual appropriations, and would be barred neither by lapse of time nor by adverse decisions, while current appropriations would be covered into the Treasury.

"The Secretary is of the opinion that this is not a fair construction of the law; but that the words 'permanent specific appropriation' should be confined to appropriations such as private bills, where nothing is left to executive officers for examination or inquiry except to identify the party, or to comply with some specific duty pointed out by the specific appropriation."

This able and clear statement, with its concise definitions, strongly emphasizes the necessity of distinguishing an appropriation like that now under consideration from an *annual* and from a *permanent annual* appropriation.

Annual appropriations are those for the service of a given year.

* See this vol., 72-74; Revised Statutes, 269, 305, 311, 3691, 3698.

Permanent annual, are those which appropriate a sum fixed, or ascertainable for the specified purposes, during each year, and are made by a law operating continuously through succeeding years by force of its own terms. (Rev. Stats., 1661, 3048, 3670, 3687, 3689.)

2. The authorities show this to be a "permanent specific appropriation." (This vol., pp. 5, 57, 73; 3 Op., 415; 4 Op., 310; 7 Op., 1-14; 13 Op., 288; Kansas Act of January 29, 1861; and 12 Stats., 127.)

3. The repealing act of July 12, 1870, treats the act of 1869 as making a *permanent specific appropriation*, by declaring that—

"*Hereafter* [after June 30, 1871, when the repeal took effect] it shall be the duty of the proper Department to submit estimates for the expenses [as the usage was, for *annual* expenses, and as the law required] and expenditures under these several heads *in the usual manner*" [i. e., annually.]

III.—There is no law authorizing this claim to be reported to Congress for payment.

It may be useful to trace in part the legislation on this subject. The act of July 12, 1870, (16 Stats., 251,) provided—

"That all balances of appropriations contained in the annual appropriation bills, and made specifically for the service of any fiscal year, and remaining unexpended at the expiration of such fiscal year, shall only be applied to the payment of expenses properly incurred during that year, or to the fulfilment of contracts properly made within that year; and such balances not needed for the said purposes shall be carried to the surplus fund: *Provided*, That this section shall not apply to appropriations known as permanent or indefinite appropriations."

The sixth section provided—

"That all balances of appropriations which shall have remained on the books of the Treasury, without being drawn against in the settlement of accounts for two years from the date of the last appropriation made by law, shall be reported by the Secretary of the Treasury to the Auditor of the Treasury, whose duty it is to settle accounts thereunder, and the Auditor shall examine the books of his office, and certify to the Secretary whether such balances will be required in the settlement of any accounts pending in his office; and if it shall appear that such balances will not be required for this purpose, then the Secretary may include such balances in his warrant, whether the head of the proper Department shall have certified that it may be carried into the general Treasury or not. But no appropriation for the payment of the interest or principal of the public debt, or to which Congress may have given a longer duration of law, shall be thus treated."

These sections were carried into the Revised statutes, sections 3690 and 3691.

While these remained in force there was a mode of carrying "unex-

pending balances" of *annual* and of *permanent specific* appropriations for *fixed sums* to the surplus fund.

But the sixth section, being section 3691 of the Revised Statutes, was repealed by the act of June 20, 1874, (18 Stats., 110,) amended by act of June 14, 1878, (20 Stats., 130,) except only that the clause in relation to appropriations for interest on the public debt, &c., is left in force.

The fifth section of the act of June 20, 1874, provides—

"That from and after the first day of July, 1874, and of each year thereafter, the Secretary of the Treasury shall cause all unexpended balances of appropriations which shall have remained upon the books of the Treasury for two fiscal years to be carried to the surplus fund and covered into the Treasury: *Provided, That this provision shall not apply to permanent specific appropriations*, appropriations for rivers and harbors, light-houses, fortifications, public buildings, or the pay of the Navy and Marine Corps; * * * *but the appropriations named in this proviso shall continue available until otherwise ordered by Congress.* * * * " (See act March 3, 1875, sec. 5; 18 Stats., 418.)

The act of June 14, 1878, (20 Stats., 130,) provides that—

"It shall be the duty of the several accounting officers of the Treasury to continue to receive, examine, and consider the justice and validity of all *claims* under appropriations the balances of which have been exhausted or carried to the surplus fund under the provisions of said section, [section 5 of act of June 20, 1874,] that may be brought before them within a period of five years. And *the Secretary of the Treasury shall report the amount due each claimant, at the commencement of each session, to the Speaker of the House of Representatives, who shall lay the same before Congress for consideration: Provided, That nothing in this act shall be construed to authorize the re-examination and payment of any claim or account which has been once examined and rejected, unless reopened in accordance with existing law.*"

It is clear that only those claims which arise under *annual* or *permanent annual* appropriations can be reported to Congress.

This act was necessary to give authority to examine the claims to which it refers. The Revised Statutes, 236, 268, 277, &c., are not regarded generally as giving authority to adjust controverted claims for the payment of which there is no appropriation. Claims never recognized by law are not within these sections.

Salaries and demands specified in the act, may, however, rest on a different basis. (Winthrop, Dig. Op. Jud.-Adv., 1880, sec. 3, p. 165.)

There must be authority by law to adjust claims.

In the Floyd Acceptances, 7 Wall., 676, it is said:

"In our structure of government all power is delegated and defined by law, * * * from the President down."

The provision for covering money into the Treasury, (act June 20, 1874,) cannot apply to "permanent specific appropriations." These are

in express terms saved from its operation. The Secretary of the Treasury, as already shown, has said that "permanent [annual] appropriations * * * may not in form be covered into the Treasury," and *a fortiori* permanent specific appropriations cannot.

A "permanent specific appropriation" may be (1) *specific in amount*, or (2) *indefinite in amount*; thus it may appropriate a *fixed sum* or an *indefinite sufficient sum*.

As to permanent *indefinite appropriations*, there never could or can be any sum to carry to the surplus fund.

Congress has determined that unexpended balances of such appropriations, and others named in the act of June 20, 1874, shall not be carried to the surplus fund, "but * * * shall continue available until otherwise ordered." It will, of course, be necessary occasionally to call the attention of Congress to the subject, so that laws may be passed to authorize such balances to be carried to the surplus fund.

If it were not for this express prohibition on the powers of the Secretary of the Treasury, he could, by virtue of his general authority, carry such balances to the surplus fund, and retransfers back to the appropriation could be made in case any part of such balance should be required; in all which cases, the analogies of the act of July 12, 1870, could be pursued. (Rev. Stats., 161, 248, 251; 18 Stats., 418.)

I have said that the provision for covering money into the Treasury (act June 20, 1874) only applies to *annual* or *permanent annual* appropriations.

These appropriations may, however, be *definite* or *indefinite*; that is, of *fixed sums*, or *such sum as may be necessary*.

The *literal* reading of the act of June 14, 1878, (20 Stats., 130,) only requires the Secretary of the Treasury to report to Congress—

"Claims under [annual or permanent annual] appropriations, the *balances of which have* been exhausted or carried to the surplus fund under the provisions of said section." (See 18 Stats., 110.)

Now, as there can be no *balance exhausted*, or *carried to the surplus fund*, under an *indefinite annual* or *indefinite permanent annual* appropriation, a question might arise as to claims presented under such appropriations after three years from the time when these appropriations became available.

The claims could not then be paid. That is settled by the language and policy of the statutes, and by the decision of the Secretary already cited. But the accounting officers of the Treasury Department may, within the five years prescribed in the act of June 14, 1878, (20 Stats., 130,) "receive, examine, and consider the justice and validity" of *such*

claims, and the Secretary of the Treasury may report them to Congress. This construction is required to carry out the policy of the statutes and the intention of Congress, which was to limit the payment of claims under *all* (1) *annual* and (2) *permanent annual* appropriations to three years from the time they became available, except public debt, &c., mentioned in the last clause of section 3691, Revised Statutes,) and in *such cases* to furnish a remedy by submitting claims to Congress. This has been decided by my predecessor. (This volume, 73.)

It is often necessary to depart from the mere letter of a statute in order to carry out its real purpose. (*Id.*, 32.)

IV.—The claimant presents two questions under this head: *First*, as to his right to payment; *second*, as to his *means of securing* it.

The letter of the First Comptroller of January 6, 1876, is a decision in favor of the *right* of the claimant to payment. That is *res judicata*. The amount due him is equally determined.

The second question is more difficult.

The First Comptroller, in effect, decided (1) as a *fact* that "the appropriation" made by act of April 7, 1869, for the present claim had "been carried to the surplus fund," and (2) as a *question of law*, that payment can only be made "after Congress shall make a special appropriation for that purpose."

(1.) *a.* It was a mistake of *fact* to suppose that any part of the appropriation had been carried to the surplus fund. It had not, and could not, for reasons already stated, have been so carried.

(2.) The decision that, as a *question of law*, an appropriation by Congress is requisite, being founded in mistake, is not conclusive now. It is not such *res judicata* as determines the question.

Generally, a ruling on a *question of law*, as of *fact*, even if erroneous, must be regarded as final against a claimant, unless the case be reopened according to usage, which has been heretofore considered. (This vol., 9, 57, 70, 79; U. S. *vs.* Bank of Metropolis, 15 Pet., 378; 5 Op., 125; 10 Op., 259; 12 Op., 358; 15 Op., 315, 423.)

But this rule cannot apply now, because (1) there is no law which authorizes the claim to be reported to Congress, and (2) there is an existing appropriation applicable to its payment; and an *erroneous* ruling on a question of law must be corrected, else there will be a denial of justice by refusal to execute the law.

If the erroneous ruling had left any legal remedy open to the claimant, it would not now be disturbed. But, as it did not, his legal rights may now be considered, upon principles analogous to those which govern a hearing on a writ of error *coram nobis* in judicial courts.

As the account was stated in favor of Mr. Ashton, and the First Comptroller refused payment by his letter and decision of January 6, 1876, there was a *final decision*. (Rev. Stats., 161, 191, 236; 20 Stats., 130; this vol., 9, 57, 70, 79.)

The Secretary of the Treasury may authorize the decision rejecting the claim to be opened up for reconsideration, after which it may be properly paid. (*Ante*, 9, 57, 70, 79; *Lavelette vs. U. S.*, 1 Ct. Cls., 147.) The Comptroller will not so order on the mere application of the claimant.

In case of payment, the mode indicated in the brief of claimant's counsel can be pursued.

I have the highest respect for the learning and ability of the distinguished Comptroller who made the decision of January 6, 1876. I have given careful consideration to the whole subject, and I cannot resist the conclusion that there is an appropriation applicable to the payment of the claim in question.

On October 26, the papers were, by the Secretary of the Treasury, returned to the First Comptroller, with authority "to reopen and examine the case." They were accordingly referred to the Fifth Auditor for statement of an account, so that a warrant may issue for payment.

TREASURY DEPARTMENT,

First Comptroller's Office, October 27, 1880.

IN THE MATTER OF FEES OF U. S. DISTRICT ATTORNEYS.—KEASBEY'S CASE.

1. After an appropriation from which claims are payable for services of district attorneys of the United States under section 838 of the Revised Statutes is exhausted or carried to the surplus fund, such claims are, by virtue of the act of June 14, 1878, (20 Stats., 130,) to be reported to the Speaker of the House of Representatives.
2. The compensation provided for by said section is a *claim* within said act.
3. The ACCOUNTING OFFICERS of the Treasury are required to consider the justice and validity of the claims so to be reported.
4. Whether the *amount* of such claims, as allowed by the Secretary of the Treasury, can be changed by the First Comptroller, *quære?*
5. Claims under said section are not excluded from allowance because not presented with claims for other services concurrent in time about the same subject-matter.
6. Section 838 of the Revised Statutes has received, by the practice of the Treasury Department, a construction which will now be adhered to.

7. The act of June 14, 1878, (20 Stats., 130,) is *retroactive* as well as *prospective*; that is, it applies to claims existing before its passage as well as those accruing afterwards.

The act of February 26, 1853, (10 Stats, 161,) known as the "fee bill," and as carried into the Revised Statutes, provides—

"SEC. 823. The following and no other compensation shall be taxed and allowed to attorneys, solicitors, and proctors in the courts of the United States, to district attorneys, clerks of the circuit and district courts, marshals, commissioners, witnesses, jurors, and printers in the several States and Territories, except in cases otherwise expressly provided by law. * * *

"Fees of Attorneys, Solicitors, and Proctors.

"SEC. 824. On a trial before a jury, in civil or criminal causes, or before referees, or on a final hearing in equity or admiralty, a docket fee of twenty dollars. * * * For each day of his necessary attendance in a court of the United States on the business of the United States, when the court is held at the place of his abode, five dollars; and for his attendance when the court is held elsewhere, five dollars for each day of the term.

"For travelling from the place of his abode to the place of holding any court of the United States in his district, or to the place of any examination before a judge or commissioner, of a person charged with crime, ten cents a mile for going and ten cents a mile for returning.

"When an indictment for crime is tried before a jury and a conviction is had, the district attorney may be allowed, in addition to the attorney's fees herein provided, a counsel fee, in proportion to the importance and difficulty of the cause, not exceeding thirty dollars."

The act of March 3, 1873, as carried into the Revised Statutes, 838, provides:

"It shall be the duty of every district attorney to whom any collector of customs, or of internal revenue, shall report, according to law, any case in which any fine, penalty, or forfeiture has been incurred in the district of such attorney for the violation of any law of the United States relating to the revenue, to cause the proper proceedings to be commenced and prosecuted without delay, for the fines, penalties, and forfeitures in such case provided, unless, upon inquiry and examination, he shall decide that such proceedings cannot probably be sustained, or that the ends of public justice do not require that such proceedings should be instituted, in which case he shall report the facts in customs cases to the Secretary of the Treasury, and in internal-revenue cases to the Commissioner of Internal Revenue for their direction. And for the expenses incurred and services rendered in all such cases, the district attorney shall receive and be paid from the Treasury such sum as the Secretary of the Treasury shall deem just and reasonable, upon the certificate of the judge before whom such cases are tried or disposed of: *Provided*, That the annual compensation of such district attorney shall not exceed the maximum amount prescribed by law by reason of such allowance and payment."

November 24, 1879, A. Q. Keasbey, the United States attorney for the district of New Jersey, presented an account against the United States, amounting to \$2,020, for professional services rendered under the Revised Statutes, section 838; an abstract of which is as follows:

In 31 cases during fiscal year [ending June 30,]	1874.....	\$230 00
In 25.....do.....do.....do.....do.....	1875.....	250 00
In 25.....do.....do.....do.....do.....	1876.....	200 00
In 36.....do.....do.....do.....do.....	1877.....	500 00
In 37.....do.....do.....do.....do.....	1878.....	430 00
In 37.....do.....do.....do.....do.....	1879.....	410 00
<hr/> 191 cases.		<hr/> Total.... 2,020 00 <hr/>

This account was duly certified by the judge of the district court, and on the 20th January, 1880, transmitted by the Commissioner of Internal Revenue to the Secretary of the Treasury, with a recommendation for payment; and on the 22d January, 1880, it was, by the Secretary, “approved, and referred to the Fifth Auditor for examination and settlement.”

The Fifth Auditor “examined and adjusted” the account for payment, and “transmitted,” February 24, 1880, the statement and vouchers for the decision of the First Comptroller.

The account is, in part, as follows:

THE UNITED STATES OF AMERICA,
In account with ANTHONY Q. KEASBEY, *U. S. Attorney for the District of New Jersey.*

“Services and expenses under section 838, Revised Statutes, in internal-revenue cases, disposed of from March 3, 1873, to January 1, 1879.

“To services rendered in the examination of the case of United States *vs.* William Manze, upon report thereof by C. Barcalow, collector of internal revenue for the third internal collection district of New Jersey, dated April 1, 1873, to determine whether prosecution should be made for violation of section 3242, for non-payment of special tax as a cigar manufacturer, brought to the district court at the term of April, 1873, and disposed of before Judge Nixon, holding said court, at the September term thereof, in the year 1873, at Trenton.

“Finally disposed of December 29, 1873—*nolle pros.*”

Other cases follow, in the same form, with other dates, some of which were cases tried, with verdict of guilty, some not guilty, some disposed of by *nolle prosequi*, and in some the accused pleaded guilty, &c.

The fees in *these* cases, authorized by section 824 of the Revised Statutes, were paid on accounts presented prior to that last above mentioned, and soon after the services were performed.

Return of Fees and Emoluments of Anthony Keasbey, attorney of the United States for the District of New Jersey, from December 31, 1876, to June 30, 1877, and of moneys paid out by him during the same period for the expenses of his office; also, of the receipt or non-receipt of fees and emoluments previously returned by him as "not received."

Fees and emoluments earned from the United States	received..	\$360 00
Do.....do.....do.....do.....	not received..	1,710 00

Fees and emoluments earned from the United States	received..	
Do.....do.....do.....do.....do.....not received..		145 00

[illegible]

Fees and emoluments earned in the performance of any official service enumerated in the act of February 26, 1853, or of any duty imposed by the other existing provision of law, and not herein otherwise stated ...		}received..
Do.....do.....do.....do.....not received..		

For salary during the same period	100 00
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Allowances to be deducted from the gross earnings and retained by the attorney.

For amount paid for rent of office.....	as per voucher No. 1..	
Fees and emoluments heretofore returned as "not re-	}	received.. 1,315 00
ceived" for the half-year ending on the 30th day of		
June, 1875		

I, Anthony Q. Keasbey, attorney of the United States for the district of New Jersey, do solemnly swear that the foregoing return is, in all respects, just and true, according to my best knowledge and belief; and that I have neither received, directly or indirectly, nor directly or indirectly agreed to receive, or be paid, for my own or another's benefit, any other money, article, or consideration than therein stated; nor am I entitled to any emoluments for the period therein mentioned other than those therein specified: So help me God..

Signed and sworn to before me, this 17th day of November, 1877.

EDW. Q. KEASBEY,

U. S. Commissioner, District of N. J.

The emolument return for the last half of 1877 was in the same form, except that there was added to the oath, as follows:

“Except in certain revenue cases under section 838, not yet presented to or allowed by the court: So help me God.”

The statutes cited have given rise to much conflict of opinion as to their proper construction. As a matter of history, it is said that the original purpose of the bill, which resulted in the act of March 3, 1873, was designed to compensate services in cases not tried in court.

It has been claimed, with much plausibility, that the cases provided for in the act of March 3, 1873, were removed, as to compensation in all respects, (for *trial*-fee, examination, &c.,) from the operation of the act of February 26, 1853, so as to leave ALL compensation, in *such* cases, to be "such sum as the Secretary of the Treasury shall deem just and reasonable upon the certificate of the judge," &c. (Rev. Stats., 838.)

Hon. B. H. Bristow, an able lawyer, and Secretary of the Treasury, in an opinion of August 27, 1874, on the act of March 3, 1873, said:

"I am of opinion that the act referred to applies only in the following cases:

"1. Where the report was made subsequently to the passage of the act, the law referring manifestly only to such cases as are reported under and by the authority of the act itself.

"2. Where the case in question has been 'tried or disposed of' by the certifying judge.

"3. The compensation intended, in cases to which the two last-stated provisions apply, is only for services rendered which are not subject to charge under the fee-bill of 1853, as, for instance, for the examination of cases presented by the collectors, with the view to ascertain whether prosecution should be instituted."

The Attorney-General, in an opinion of April 3, 1874, (14 Op., 384,) held that—

"Where accounts were presented to the Treasury Department for services rendered by a district attorney during the year 1873, in prosecutions for fines, penalties, and forfeitures for violation of the revenue laws: Advised that they may be paid under the act of March 3, 1873, chapter 244, if the charges therein are deemed just and reasonable by the head of that Department."

The First Comptroller, Hon. R. W. Tayler, in an opinion of January 27, 1877, on section 838, Revised Statutes, said:

"This office has uniformly held that the provisions in question authorized payment for services not otherwise provided for, and did not, in any sense, change or affect the fee-bill. * * * The old law remains, notwithstanding the new, and both are so to be construed as to give effect to both, unless it clearly appears that Congress intended to repeal or supersede the former. Repeals by implication are not received with favor, and unless the later law be utterly inconsistent with the old, that remains. In the present case the new law has full force without touching the former. * * *

"To admit the construction claimed, is to admit that, without apparently intending it, Congress has taken away the large portion of public business from the control of law, so far as relates to the compensation of attorneys, without expressing such intent.

"New duties have been imposed upon district attorneys, and compensation for their performance has been authorized.

"This seems to have been the object of the law. If the construction claimed be allowed, every case will be "reported," or made to appear

to have been reported to the attorney, and so the costs greatly increased, and manifestly without intention.

“Otherwise it would have been so stated as to be without doubt.”

In a very able and learned report, (House Ex. Doc., No. 27, 2d sess. 45th Cong.,) by Hon. H. F. French, Assistant Secretary of the Treasury, November 30, 1877, it is said:

“The district attorney may receive out of his fees and emoluments, of which he makes return, not exceeding \$6,000 a year, also his two per cent. on money collected by section 825, Revised Statutes, also his fees for defending suits against United States officers, &c., under section 827, Revised Statutes. But if his fees so returned exceed \$6,000, he cannot receive anything more under sections 838 and 3085, Revised Statutes.

“If his fees for the calendar year do not exceed \$6,000, he may receive pay for certain services under sections 838 and 3085, Revised Statutes, both of which seem to relate to fines, penalties, and forfeitures, and cover the same class of cases. They both refer to the same act of the 3d of March, 1873, as their basis. He may also receive compensation for services in prize cases.

“What fees may be allowed under sections 838 and 3085, Revised Statutes, is a question for consideration.

“The First Comptroller is understood to hold that under said sections only fees for preparation before trial can be allowed, inasmuch as the fee-bill provides for and fixes the fees for services in court.

“This is a very important point, because large claims are filed for services in court in trial of cases under said sections 838 and 3085, Revised Statutes.

“The Comptroller's rule is not satisfactory to the attorneys, who claim that under said sections 838 and 3085, Revised Statutes, they are entitled to be paid reasonable fees for their services in court as well as those preliminary to trial.

“The fee-bill, section 824, Revised Statutes, allows to district attorneys, on a trial before a jury or a final hearing in equity or admiralty, a fee only of \$20. It is not unusual that a jury trial may occupy five, ten, or even forty days in court. In one of the whiskey trials of great length in Missouri in which special counsel were paid \$10,000 fees by the Government, the district attorney, who had assisted faithfully throughout the trial, presented his bill under section 838, Revised Statutes, for compensation, and the accounting officers disallowed it, because the fee-bill limits the fee for a trial in court to \$20. The Secretary had no power to make just compensation for the trial, but could only allow him a reasonable fee for the preparation of the case for trial.

“It is quite manifest that more legislation is necessary to define the compensation which district attorneys should receive. The tradition of the Department is, that the various amendments to which we have referred, increasing the allowances of district attorneys, have been made at the suggestion of friends in the interest of the district attorney for the southern district of New York. Whether that be true or not, the allowances made to that officer in some of the past years have exceeded \$30,000; an amount which certainly would not be deliberately allowed to that officer were the subject now before Congress.

"The following order of the Secretary was designed to remedy such abuses in future:

"WASHINGTON, D. C., June 4, 1877.

"From and after the 1st day of July next, the allowance made to district attorneys for services under the provisions of section 827, Revised Statutes, or any other law authorizing allowance of fees by the Secretary of the Treasury, or with his concurrence or approval, shall not exceed during any fiscal year the sum of \$4,000, or a *pro rata* amount for any quarter of such fiscal year."

A. J. Falls, for the claimant, submitted an oral and written argument.

1. He insisted that the amount claimed is fixed by the authority required by law, as for "services rendered in the examination of" the several cases specified in the account, upon report of collector, "to determine whether prosecutions should be made," and should be paid by force of section 838.

2. He insisted that the claim should be allowed under said section, not merely for *examination of cases*, but for fees for trial in addition to any amounts paid under section 824.

He submitted an argument made May 7, 1877, by Hon. George H. Williams, (formerly Attorney-General,) in which he says:

"Section 838 is not subject to the provisions of section 824 of the Revised Statutes, fixing the fees of district attorneys. Because section 824 was passed in 1853, and section 838 in 1873; and it is familiar law that in so far as a later statute is repugnant to a former, the former is repealed. These two sections are inconsistent with each other.

"Section 824 fixes a certain fee (say \$20, for example) for certain services by the district attorney; but section 838 says that for *such services* that officer shall be paid such sum as the Secretary of the Treasury shall deem reasonable and just.

"Congress, feeling the necessity of a rigid enforcement of the revenue laws, and knowing that great professional skill and labor were required in many cases arising under such laws, and that \$20 or \$50 were a poor incentive to diligence and zeal in suits, some of which might occupy the district attorney for days and weeks, determined, instead of giving the district attorney the same fees in a cause involving \$100 as \$100,000, and the same pay for a day as for a month's labor, that his compensation should be in some proportion to the value of his services, as that value might be fixed by the judge, under the supervision of the Secretary of the Treasury. It is to be noticed, however, that in no case can his entire annual compensation exceed \$6,000. Section 838 is not the only provision of law in conflict with the fee-bill. Section 825 gives to a district attorney two per cent. upon all moneys collected in a suit under the revenue laws, in lieu of all costs and fees.

"Section 827 provides that when a district attorney appears in behalf of a revenue officer in a suit, &c., by direction of the Secretary of the Treasury, he shall receive such compensation therefor as may be certified by the proper court, and approved by said Secretary. The practice has always been to pay district attorneys under this section without reference to the fee-bill. Section 3085, as to the pay of district attorneys, is substantially like section 838.

"Section 4646 allows district attorneys, in prize cases, such compensation as may be determined by the court. These sections show that the fee-bill does not control in all cases, and that revenue cases, especially, are exceptional.

"The fee-bill was passed in 1853, and as early as 1863, certain revenue cases were excepted from its operations. (12 Stats., 741.) Then, in 1866, another act was passed providing specifically for the compensation of district attorneys in revenue cases, (14 Stats., 179;) and, finally, in 1873, the act in question was passed, by which special provision is made for paying district attorneys, in all prosecutions, for fines, penalties, and forfeitures, under customs and internal-revenue laws. (17 Stats., 587.) Manifestly the last statute was intended to provide the only compensation district attorneys were to receive in such cases. The act of 1873 is a substitute for all antecedent legislation upon that subject. You are well aware that where an act of Congress embraces the whole subject-matter of a prior statute, the prior statute is repealed without any express words to that effect. Section 838 is clearly intended to provide compensation for the district attorney for his services in court, because the certificate is to be made by the judge before whom the cases are '*tried or disposed of*.' This certainly implies that the judge, in his certificate, is to take notice of what transpires in court. It seems impossible, if the natural and ordinary meaning is to be given to language, to hold that the words '*expenses incurred and services rendered in all such cases*,' do not include services rendered in such cases, by the district attorney, before the court. While I was Attorney-General my attention was directed to the question, (14 Opinions, 384,) and I cannot find any ground for doubt as to the correctness of the opinion I then expressed."

3. This claim is not barred by reason of its not being presented with accounts for other services.

a. The fees provided for by section 824 are paid out of appropriations made by Congress for the expenses of the courts of the United States. (See Laws 2d session of the 46th Cong., p. 278, where \$350,000 is appropriated for the payment of district attorneys and their assistants.)

These accounts, under the law, are rendered to the First Auditor of the Treasury, who examines, audits, and refers them to the First Comptroller of the Treasury, by whom they are settled.

b. The accounts rendered under section 838 are submitted to the Commissioner of Internal Revenue for allowance, then to the Secretary of the Treasury for approval, then to the Fifth Auditor for audit, then to the First Comptroller of the Treasury for settlement, and are payable out of appropriations made for the *internal-revenue service*. (See Laws 2d session of 46th Cong., p. 220, where an appropriation of \$1,700,000 is made "for salaries and expenses of agents and surveyors, for fees and expenses of gaugers, for salaries of storekeepers, and for *miscellaneous expenses*.")

It will thus be seen that it is necessary under the law for the district

attorneys to render separate accounts for their services under these two appropriations; and that the rendering of one account, and the failure to render another at the same time, is not a bar to its allowance at a subsequent date.

—

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

The foregoing statement presents several questions.

I.—As to the allowance for all services rendered to and including the fiscal year ending June 30, 1878, payment cannot now be made.

1. The reason is, that, by force of the act of June 20, 1874, (18 Stats., 110,) there is no appropriation available, the appropriation having been “exhausted or carried to the surplus fund.”

2. But, under the act of June 14, 1878, (20 Stats., 130,) it is made “the duty of the several ACCOUNTING OFFICERS of the Treasury to * * * receive, examine, and consider the *justice* and *validity* of all claims under appropriations the balances of which have been exhausted or carried to the surplus fund.”

Under the act of June 14, 1878, *as well as the Revised Statutes, sections 236, 269, and 277, clause sixth*, the First Comptroller may “consider the *justice* and *validity*” of these claims, which authority includes the right to determine the amount to be allowed; and this is to be reported to the Speaker of the House of Representatives under said act. Section 838, as to *this* subject, does not control sections 236, 269, or the act of 1878. All are in force, to be considered together, and effect is to be given to *all*.

3. These are “*claims*” within the meaning of the fourth section of the act of June 14, 1878. The amount remains to be ascertained.

Salaries *fixed in amount* would probably be considered *claims* under this statute.

Whether they are so under the Revised Statutes, section 3477, is yet an open question.

II.—As to compensation for services since June 30, 1878—that is, for the *one* fiscal year ending June 30, 1879, \$410—this could be paid if the proper appropriation were still available.

1. In such case the question might arise whether the allowance by the Secretary of the Treasury, under the Revised Statutes, section 838, is conclusive as to amount. It provides that—

“The district attorney shall receive, and be paid from the Treasury, such sum as the Secretary of the Treasury shall deem just and reasonable, upon the certificate of the judge before whom such cases are tried

or disposed of." (5 Op. 87; 6 Op., 226; 12 Op., 43; *Delaware vs. U. S.*, 5 Ct. Cls., 56; see *Winnisimmet Co. vs. U. S.*, 12 Ct. Cls., 326; *Kaufman's case*, 96 U. S., 567; 12 Ct. Cls., 330, 470, 579; 13 Ct. Cls., 135, 308; 14 Ct. Cls., 355, 367; *First National Bank vs. U. S.*, 15 Ct. Cls.; *P. and F. R. R. Co. vs. Stimson*, 14 Pet., 448; *Allen vs. Blunt*, 3 Story, C. C., 742.)

Other provisions of law in force require the action of the Fifth Auditor, subject to the decision of the First Comptroller. (Rev. Stats. 236, 269, 277, clause sixth.)

2. But the appropriation for 1879 has been *exhausted*.

The claim of \$410, under the appropriation for that year, therefore, stands in the same condition as the claims for prior years.

III.—The act of June 14, 1878, is *retroactive* as well as *prospective*.

Prior to 1870, balances of appropriations made for payment of expenses incurred for any *continuous* service of the Government—expenses of courts, for example—were not carried to the surplus fund, but were used as current appropriations until exhausted. The act of July 12, 1870, section 5, (16 Stats., 251,) put a stop to this practice, but left the balances available for expenses incurred in the year for which the appropriations were made, until the Secretary of the Treasury was informed that they were not needed. Then came section 5, act June 20, 1874, requiring the Secretary to cause all unexpended balances to be carried to the surplus fund at the end of two years after the close of the fiscal year for which each appropriation was made, and to report to Congress any balances which needed to be reappropriated. This partially closed the door against old claims, as they could not be audited when there was no money to pay them, and no authority to receive them. But the door was reopened by section 4, act of June 14, 1878, (20 Stats., 130,) as follows:

That so much of section five of the act approved June 20, 1874, as directs the Secretary of the Treasury, at the beginning of each session, to report to Congress, with his annual estimates, any balances of appropriations for specific objects affected by said section that may need to be reappropriated, be, and hereby is, repealed. And it shall be the duty of the several accounting officers of the Treasury to continue to receive, examine, and consider the justice and validity of all claims under appropriations the balances of which have been exhausted or carried to the surplus fund under the provisions of said section, that may be brought before them within a period of five years. And the Secretary of the Treasury shall report the amount due each claimant, at the commencement of each session, to the Speaker of the House of Representatives, who shall lay the same before Congress for consideration: *Provided*, That nothing in this act shall be construed to authorize the re-examination and payment of any claim or account which has been once examined and rejected, unless reopened in accordance with existing law.

The construction given to this section is, that the period of five years mentioned applies to the time within which the claims may be received, and not to the time in which claims may accrue. This view has been sanctioned by Congress, which, at each of its sessions held since the law was enacted, has made appropriations to pay claims for services performed more than five years anterior to the date of the act. No lapse of time has been made, by any statute now in force, a bar to the reception and examination of claims of this character.

On the 3d of March, 1845, an act was approved containing, in its fourth section, the following clause:

“Nor shall the accounting officers of the Treasury act upon any account which shall not be presented within six years from the date when the claim first existed.” (5 Stats., 764.)

This, however, was repealed August 10, 1846, the year after its passage.

IV.—The claims are not excluded from consideration by the fact that they were not presented in the respective years when the services were performed, and when the accounts for services, under section 824, in the same cases, were rendered.

The delay in presenting these claims is undoubtedly a circumstance which requires that they should receive a very careful examination. In actions in courts, if part of an entire claim is sued on, a judgment bars an action on the residue.

There can be, properly, no splitting of causes of action. But this strict rule has never been applied in the Treasury Department, and especially where there are separate appropriations for separate and distinct kinds of service.

The district attorney has satisfactorily explained the delay as to the presentation of his claims.

V.—The construction which has been given in the Treasury Department to section 838 of the Revised Statutes will be adhered to.

There is some doubt whether it was not designed to provide compensation for services as well for examination as for trial of cases in court, so as to remove *such cases* from the operation of section 824.

Specific provisions, relating to a particular subject, must generally govern, in respect to that subject, as against general provisions in other parts of the law, which might otherwise be broad enough to include it. (*Felt vs. Felt*, 19 Wis., 193; *State vs. Goetze*, 22 Wis., 363.)

But it has been otherwise decided; and that ruling is not without authority.

Thus it is said that—

“Where two statutes of the same date relate to the same thing, but one is more comprehensive than the other, there will be an effort to give to one some operation not embraced in the other, so that each may, if possible, have some effect, that the legislation may not appear to have been vain and useless.” (Sedgwick, Stats., 211; N. L. and B. Inst. *vs.* Com., 14 B. Monroe, 266; Cannon *vs.* Vaughan, 12 Tex., 402; 20 Tex., 355; 5 Ind., 413; State *vs.* Springfield, 6 Ind., 83, 354; 9 Cow., 437; 10 Ohio, 173; 13 Ohio Stats., 458; 1 Oregon, 31; 8 Fla., 46; 14 Md., 369; 21 How., 463; 3 Blatch. C. C., 325; Potter's Dwarries on Stats., 189.)

To some extent this is supported by the analogy of the rule of construction, *Ut res magis valeat quam pereat*. (1 Bl. Com., 89; 2 Rol., 127; 31 Ala., 227; 5 Cal., 169; 13 Ia., 310; 13 Ohio St., 382; 7 Cush., 53, 89.)

Sections 824 and 838, of the Revised Statutes, are taken from statutes *not* “of the same date,” and hence the principle above cited from Sedgwick does not literally apply.

The act of 1873 (sec. 838) did not in terms repeal any part of the act of 1853, (sec. 824;) and, as repeals by implication are not favored, it is proper to apply the act of 1873 to *a service not provided for* in the act of 1853, leaving the act first in date in force as to all services covered by it.

In those cases in which investigations shall be made by district attorneys, and no suits commenced, there must be an allowance by the proper judge of the district court.

The words in section 838, “before whom such cases are tried or disposed of,” apply to cases tried or disposed of in the manner previously set forth in the section, but do not so limit the operation of the act as to dispense with the necessity of a certificate by the judge in cases investigated, but not so tried or disposed of. (U. S. *vs.* Stern, 5 Blatch. C. C., 512.)

VI.—After the allowances made, and the evidence presented, though possibly not as full as it might be, it may fairly be presumed that the sum of \$2,020 is reasonably due the claimant; and at all events the claim must undergo the scrutiny of Congress.

It will be ascertained in this office whether the sum claimed for any one year will increase the emoluments of the attorney so as to exceed the maximum, and, if it does so, the excess will be disallowed. The amount allowable will be included in the next annual report of claims made under section 4, act of June 14, 1878, by the Secretary of the Treasury to the Speaker of the House of Representatives for the consideration of Congress.

TREASURY DEPARTMENT,

First Comptroller's Office, October 30, 1880.

IN THE MATTER OF THE POLICE COURT OF THE DISTRICT OF COLUMBIA.—BUNDY'S CASE.

1. The Revised Statutes of the District of Columbia do not make an appropriation to pay the salaries of the police judge of said District, or of an *ad interim* judge.
2. Appropriations are generally made for the salaries of the judge and for the expenses of the police court on estimates submitted to Congress.
3. The *Louisville and Portland Canal case* (*ante*, 141) is similar in principle as to the construction of section 1080 of the Revised Statutes of the District of Columbia.
4. Additional reasons given in support of the decision in that case.

On the 31st August, 1880, Charles S. Bundy was designated and qualified, under section 1047 of the Revised Statutes relating to the District of Columbia, to discharge the duties of the police judge of the District, and served as such thirty-four days, to October 3, inclusive; for which service he presented for payment, to Hon. Frederick Douglass, marshal of the District, an account for \$340 against the District.

October 23, 1880, the marshal addressed to the Attorney-General a letter enclosing the account, and saying:

“Formerly it was the custom of the United States marshal to pay all expenses of the police court, including salaries of the judge and *ad interim* judge, as provided in sections 1046, 1047, 1048, and 1080, Revised Statutes of the District of Columbia; but sometime in the year 1875, by order of court, or otherwise, the manner of paying the expenses of the police court was changed. After that time the marshal was directed to pay all moneys coming into his hands from fines, &c., into the treasury of the District of Columbia, and the expenses of the court were paid by the District authorities. This way of paying those expenses has continued until this time, and special appropriations have been made by Congress for that purpose, upon estimates made by the Commissioners of the District.

“Judge Bundy presented his claim to the Commissioners for payment, and it was rejected, on the ground that no specific appropriation had been made.

“He has now presented it to this office for payment, and claims that I should pay it by authority of the law and sections above referred to.”

October 26, the Attorney-General referred the papers to the Secretary of the Treasury, who, on the 27th, referred them to the First Comptroller.

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

The Revised Statutes relating to the District of Columbia provide that “the salaries of the judge * * * of the police court * * * shall be paid by the District, quarterly,” (sec. 1046;) that “in case of sickness, absence, or disability of the judge, either of the justices of the supreme court of the District shall designate some justice of the peace to discharge the duties of the police judge until such disability

be removed," (sec. 1047;) that "the justice so designated shall * * * be paid in the same manner as * * * the judge," (sec. 1048;) and that "the moneys collected upon the judgments of the police court, or so much thereof as may be necessary, shall be applied to the payment of the salaries of the judge and other officers of the court * * *" (sec. 1080.)

If these sections stood alone, it might be more difficult to decide whether they make an appropriation; but they do not make an appropriation of money. This is sufficiently shown by the principles of construction stated in the *Canal case, ante*, 141, and especially in view of the provisions of the "organic act" hereafter referred to. (See Randolph's case, 2 Lawrence, Compt. Dec., 14.) There should be a separate act specially appropriating "the moneys collected upon the judgments," or at least making an appropriation which would include them. It might have been added in the *Canal case*, and may here illustrate the effect of section 1080, that acts of Congress declaring officers entitled to payment for salaries or services, or giving authority to officers to use money, are not generally to be deemed as making appropriations of money. As early as December 19, 1850, a rule was adopted by the Senate, and has been continued in force ever since, substantially as follows:

No amendment proposing additional appropriations shall be received to any general appropriation bill, unless it be made to carry out the provisions of some existing law, or some act or resolution previously passed by the Senate during that session, or moved by direction of a standing or select committee of the Senate, or in pursuance of an estimate from the head of some of the Departments; and no amendment shall be received whose object is to provide for a private claim, unless it be to carry out the provisions of an existing law or a treaty stipulation.

In pursuance of this rule, the wisdom of which has been tested by long usage, Congress has generally by law fixed the right to salaries, and prescribed duties of officers, or given them authority to expend money, in advance of the acts which actually make the requisite appropriations. A rule has been in force in the House of Representatives since September 14, 1837, providing that—

"No appropriation shall be reported in general appropriation bills, or be in order as an amendment thereto, for any expenditure not *previously authorized by law*."

Section 1080 of the Revised Statutes makes no appropriation, but merely provides *the fund* out of which the salaries of the police judge and other officers of the court, and the expenses thereof, are to be paid, and requires any surplus to "be paid into the treasury of the District."

This provides a mode of book-keeping, and requires the surplus, if any, to go each year into the general treasury of the District. The "organic act" of June 11, 1878, (20 Stats., 104,) requires the Commissioners of the District to submit estimates of expenses to the Secretary of the Treasury for his approval, disapproval, or suggestion of changes in the same; the original estimates, with the Secretary's certified statement of the amount approved by him, to be delivered to the Commissioners, who shall transmit the same, for appropriations, to Congress; and the act contemplates that one-half shall be paid from the revenues of the District and one-half from the Treasury of the United States. (Richey's case, *ante*, 90.) The usage is, for the Commissioners of the District to pay salaries and court expenses on vouchers which are presented to the Treasury Department; and then one-half of the amount is refunded to the Commissioners, in pursuance of appropriations. The appropriation act of June 4, 1880, (21 Stats., 155-161,) is in the usual form. That act failed to provide for the pay of an *ad interim* judge, though an estimate for the purpose was submitted to Congress.

It is not designed to touch the question whether statutes authorizing officers to use public money which is never in form "covered into the Treasury" require a specific appropriation otherwise than in such statutes. (Rev. Stats., 2748, 3617, 3618, 3692, 4803; 10 U. S. Stats., 649; 13 *Ib.*, 239, 483; 20 *Ib.*, 163.)

It seems, from information received, that the claim of Judge Bundy is just, and that there was a necessity for his services. There is no law under which he can be paid. The Commissioners of the District of Columbia will doubtless include the claim in their estimates, as authorized by section 3 of the act of June 14, 1878, (20 Stats., 104.)

TREASURY DEPARTMENT,

First Comptroller's Office, November 5, 1880.

IN THE MATTER OF REFUNDING INTERNAL-REVENUE TAX.—FLACK'S CASE.

1. The limitation of two years, provided in section 3228 of the Revised Statutes, on claims for refunding internal-revenue tax illegally assessed or collected, begins with the date of the payment of such tax.
2. The act of June 20, 1874, (18 Stats., 110,) while providing a limitation on the payment of claims generally, leaves unchanged the limitation made by section 3228 of the Revised Statutes.
3. Claims for refunding of taxes illegally assessed or collected, which have not been presented to the Commissioner of Internal Revenue within two years from

date of payment, cannot, under the act of June 14, 1878, be reported by the Secretary of the Treasury to the Speaker of the House of Representatives, for the consideration of Congress.

4. The sixth section of the act of March 1, 1879, (20 Stats., 340,) makes two classes of cases for a refund of taxes, *in addition* to those previously existing.
5. It applies to certain taxes which had previously been legally assessed and collected.
6. It is *retroactive* as to assessments made on and since January 1, 1874; and is *prospective*, applying to cases after it took effect.
7. It enlarges the operation of section 3689 of the Revised Statutes, making a permanent annual appropriation for refunding taxes illegally assessed and collected, so as to make said section applicable to the new claims.
8. This is one of the cases in which the mere letter of a statute yields to the evident purpose of Congress.
9. The act of June 20, 1874, (18 Stats., 110,) only applies a limitation on the payment of claims of two years after the fiscal year in which there was a fixed liability on the Government.
10. Under section 6 of the act of March 1, 1879, (20 Stats., 340,) claims to remit or refund taxes assessed on or after January 1, 1874, and prior to March 1, 1879, can be considered, if presented within two years from the last-named date. (Rev. Stats., 3228.)
11. Claims for refunding taxes assessed since March 1, 1879, must be made within two years after payment thereof.

The material facts are these:

April 11, 1876, Flack Brothers, distillers of spirits in the first internal-revenue district of Maryland, were assessed by the Commissioner of Internal Revenue \$453 10, under the Revised Statutes, section 3309, for excess of material used—that is, “for tax upon the spirits that should have been produced from the grain used”—and this sum was paid, April 29, 1876, to the collector. February 24, 1879, Flack Brothers made a claim to have said sum refunded, because, as their affidavit alleges, “the assessment was caused by deponents’ misinformation as to the requirements of the regulations, and through no fraudulent intent on the part of said firm.”

The “act to amend the laws relating to internal revenue,” approved March 1, 1879, (20 Stats., 340,) provides:

“SEC. 6. That whenever, under the provisions of section thirty-three hundred and nine of the Revised Statutes, an assessment shall have been made against a distiller for a deficiency in not producing eighty per centum of the producing capacity of his distillery as established by law, or for the *tax upon the spirits that should have been produced from the grain*, or fruit, or molasses found to have been used in excess of the capacity of his distillery for any month, as estimated according to law, such excessive use of grain, or fruit, or molasses having arisen from a failure on the part of the distiller to maintain the capacity required by law to enable him to use such grain, or fruit, or molasses without incurring liability to such assessment, and it shall be made to appear to the satisfaction of the Commissioner of Internal Revenue that said de-

iciency, or that said failure, whereby such excessive use of grain, molasses, or fruit arose, was not occasioned by any want of diligence or by any fraudulent purpose, on the part of the distiller, but *from misunderstanding as to the requirements of the law and regulations in that respect or by reason of unavoidable accidents*, then, and in such case, the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, *is authorized*, on appeal made to him, to remit or *refund such tax*, or such part thereof as shall appear to him to be equitable and just in the premises: *Provided*, That no tax shall be remitted or refunded under the provisions of this section upon any assessment made prior to January first, eighteen hundred and seventy-four: *Provided further*, That no assessments shall be charged against any distiller of fruit for any failure to maintain the required capacity, unless the Commissioner shall, within six months after his receipt of each monthly report, notify such distiller of such failure so to maintain the required capacity."

January 13, 1880, the Secretary of the Treasury, by letter to the Commissioner of Internal Revenue as to this claim, said:

"You being satisfied that the case properly comes within the terms of section 6, act of March 1, 1879, under which relief is sought, I see no objection to the allowance of the claim to the amount of \$453 10, as proposed by you."

This claim was allowed by the Commissioner of Internal Revenue January 19, 1880, as one "for the refunding of taxes erroneously assessed." January 22, 1880, the Commissioner stated an account in his favor with the United States "for the refunding of taxes erroneously assessed and collected," as per schedule, &c. On the same day the Fifth Auditor certified to the First Comptroller that he had "examined and adjusted" said account, and found \$453 10 due from the United States for refunding taxes erroneously assessed and collected, payable to Flack Brothers.

The question arises, whether the appropriation applicable to this claim has lapsed under the act of June 20, 1874, (18 Stats., 110.)

George L. Douglass, for the claimants, made an able oral argument, and submitted a brief, claiming—

1. The act of March 1, 1879, section 6, (20 Stats., 340,) is remedial, to be liberally construed, and makes an appropriation to pay this claim, which is *not* for the refund of tax "erroneously or illegally assessed and collected," as provided for by the "permanent annual appropriation" in section 3689, Revised Statutes, which relates to claims filed within two years from date of payment. (Sec. 3228.) This claim is not for tax "erroneously or illegally collected," but is under act of March 1, 1879, section 6 of which recognizes the original legality of the assessment.

2. If this view is not sustained, then the "permanent annual appropriation" is applicable, and has not lapsed. Claims are to be paid from appropriations for the year in which the liability accrued. In matters of contract the appropriation is generally determined by the date of service or supplies furnished. As to taxes refunded by reason of error

in collection, it is determined by date of collection, because the right to recover then accrues. (Sec. 3228.) But as to this claim, no right in the claimant existed, and no liability devolved on the Government until the passage of the act of March 1, 1879.

A question arose, involving this point in a dispute as to the application of the statute of limitations (Rev. Stats., 3228) to this class of cases, and it was decided in accordance with the above views by the Solicitor of Internal Revenue, approved by the Commissioner, and adopted by the Secretary.

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

The sixth section of the act of March 1, 1879, (20 Stats., 340,) does not make an appropriation. This is sufficiently determined by principles heretofore stated. (Canal case, *ante*, 141; Bundy's case, *ante*, 184.)

Section 3220, Revised Statutes, authorizes the Commissioner of Internal Revenue to refund taxes erroneously or illegally assessed or collected; section 3228 requires the claim therefor to be presented within two years next after the "cause of action" accrued; and section 3689 makes a permanent annual appropriation for refunding such taxes.

The "cause of action," or right to claim a refund, arises with the date of payment of the tax. If the limitation of two years did not exist under the Revised Statutes, section 3228, there would still be a limitation of two years from the end of the fiscal year in which the payment was made, arising by force of the act of June 20, 1874, (18 Stats., 110,) and the practice under the Secretary's decision of April 20, 1877, "in relation to the use of appropriations for the payment of accrued claims." (Ex. Doc. No. 27, 2d Sess. 45th Cong.; Police case, *ante*, 72.)

The act of June 20, 1874, leaves in force section 3228, which applies the limitation of two years, and excludes any report to the Speaker of the House of Representatives, as to claims for refund of taxes illegally assessed or collected. If the strict import of language should be adhered to, and the exact letter of the statutes involved in the subject now under consideration enforced, claims arising under the sixth section of the act of March 1, 1879, (20 Stats., 340,) would not be for a refund of taxes "illegally assessed or collected," and hence would not be barred in two years by section 3228, nor appropriated for by section 3689. The act of 1879 makes *two additional* cases for refunding tax: when a party (1) "from misunderstanding as to the requirements of the law and regulations," or (2) "by reason of unavoidable accidents," in respect to the matters referred to in said section as affected by prior law, has been charged with or has paid the tax. This act applies to taxes which *had been* legally assessed and collected. But it is evident that Congress intended to put the taxes to be refunded under that act on the footing of taxes "illegally assessed or collected." No specific appro-

priation has been made for paying the taxes so to be refunded, and hence it is fairly to be inferred that Congress intended the permanent annual appropriation for taxes illegally assessed or collected to apply. It is not to be presumed that Congress failed to make the purpose of this legislation complete, if a reasonable construction would make it so. The act of 1879 *enlarges*, upon principles heretofore stated, the cases to which the permanent annual appropriation applies. (Audit case, *ante*, 37.)

The result is, that the claims for refunding tax under section 6 of the act of March 1, 1879, are within the two years' limitation of the Revised Statutes, section 3228, and payment is provided for by the permanent annual appropriation of section 3689.

The sixth section of the act of March 1, 1879, is *retroactive* as to assessments made on and since January 1, 1874; and is *prospective*, applying to cases arising after it took effect. The allowance of this claim was suspended in order to determine whether the permanent annual appropriation of the Revised Statutes, section 3689, is now available for its payment.

The fifth section of the act of June 20, 1874, (18 Stats., 110,) repeals all except the last sentence of section 3691 of the Revised Statutes, and provides, with certain exceptions—

That from and after the first day of July, 1874, and each year thereafter, the Secretary of the Treasury shall cause all unexpended balances of appropriations which shall have remained upon the books of the Treasury for two fiscal years to be carried to the surplus fund and covered into the Treasury.

The Secretary of the Treasury, in his decision of April 20, 1877, construes this as applicable to permanent annual appropriations, like that made for the refund of taxes illegally assessed or collected, and says:

"The plain purpose of this act was to confine the officers of the Government to the allowance and payment of *liabilities* within three fiscal years, [two years after the current fiscal year in which the liability accrued.] During that period the appropriation was available, and not afterwards. * * * A permanent annual appropriation contemplates that a *liability will accrue* in the future from time to time, and that, *when it accrues*, it may be paid from the Treasury, subject to the same general laws as to time, place, and manner that apply to *other annual appropriations*."

Under this construction, *the date when the liability accrues* fixes the appropriation of that year as applicable to the payment of the claim. The tax was, indeed, paid in this case April 29, 1876. But until the act of March 1, 1879, was passed there was no liability on the part of the Government to pay the claim. *The liability then accrued*. The permanent annual appropriation of the fiscal year ending June 30, 1879, was applicable to it, and continues available until June 30, 1881, the claim having been duly presented or pending within the two years

limited by section 3228. The appropriation is indefinite in amount; it cannot be "exhausted" or "carried to the surplus fund;" and hence no claim of this character can ever be reported to the Speaker of the House under the act of June 14, 1878. (20 Stats., 130.)

There is another view which leads to the same result.

The sixth section of the act of March 1, 1879, authorizes the refunding of taxes for claims like this, under assessments made on and after January 1, 1874, thus reaching back five years and two months. The act contemplated the refund for claims during that time. It made it the duty of the Commissioner of Internal Revenue to *refund all*, and the duty of the proper officers to settle, adjust, and pay. (Rev. Stats., 191, 236, 248, 3689; 20 Stats., 340.) It did not contemplate or require any report to the Speaker of the House of Representatives under the act of 1878; it placed all on the same footing, with a right of payment, and recognized an existing appropriation as applicable and not lapsed.

Under *annual* appropriation acts it is a general rule that money thereby appropriated can only be used (1) to pay expenses properly incurred during the year, and (2) to pay, within two years thereafter, dues upon contracts properly made within the year, even if the performance be not completed during that year.

This is the construction given by the Attorney-General (13 Op., 290) to sections 5, 6, and 7 of the act of July 12, 1870, (16 Stats., 230,) since carried into the Revised Statutes, sections 3690, 3691, modified by fifth section, act of June 20, 1874, (18 Stats., 110,) and section 3679.

A similar construction was given in the Arsenal case, *ante*, 147.

So far as annual appropriation acts make provision for *salaries* and *personal services*, they generally apply only to salaries accruing or services rendered during the year, though *payments* may be made within two years thereafter. (Wood's case, *ante*, 1.)

The balance due, as shown on the Fifth Auditor's adjusted account, will be certified; and a warrant for payment will be issued accordingly.

TREASURY DEPARTMENT,

First Comptroller's Office, November 8, 1880.

The annexed circulars and regulations are given for information:

SPECIAL No. 165.

Concerning the Method of Determining the Quantity of Grain Actually Used by a Distiller.

1875.
DEPARTMENT No. 122. }
Internal Revenue.

TREASURY DEPARTMENT,
Office of Internal Revenue,
Washington, September 6, 1875.

On the receipt of the distiller's return in each month, the Commissioner of Internal Revenue will proceed, in accordance with section

3309 of the United States Revised Statutes, to inquire and determine whether the distiller has accounted for all the grain or molasses used and all the spirits produced by him in the preceding month, and also whether he has used any grain or molasses in excess of the capacity of his distillery, as estimated according to law.

In making this inquiry and determination, the quantity of grain or molasses used will be ascertained from the distiller's return, the storekeeper's monthly abstract on Form No. 88, and such other evidence as is available; the quantity of grain or molasses, in bushels and pounds or gallons, on hand in mash at the beginning of the month, will be added to that put into mash during the month, and from the total will be deducted the quantity on hand in mash at the end of the month; and, in computing the bushels of grain or gallons of molasses used from the gallons of mash or beer brewed or fermented, the same course will be pursued, namely, the mash or beer on hand at the beginning of the month will be brought forward, and added to the production of the month, and the quantity on hand at the end of the month will be deducted therefrom; and the remainder only, in either case, will be considered as the quantity of material *used* during the month.

Collectors will instruct and *require* storekeepers, in making their monthly abstracts, Form No. 88, to enter therein the grain or molasses used and the mash or beer made therefrom, in accordance with the above, and with the instructions contained in Series 6, No. 7, page 30, (latest print,) and to forward at once to this office, Forms 88, for the months of July and August last past, amended in these respects.

Collectors will also require distillers to report, on Form 14, the quantity of mash or beer *used*, instead of the quantity made, as now required.

A revised Form 88 is in course of preparation.

D. D. PRATT,
Commissioner.

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CIRCULAR LETTER NO. 38.

To Collectors, concerning the Method of Determining whether Material has been used by a Distiller in Excess of Capacity.

1877.
DEPARTMENT NO. 29. }
Internal Revenue.

TREASURY DEPARTMENT,
Office of Internal Revenue,
Washington, February 20, 1877.

It is made the duty of the Commissioner of Internal Revenue by the Revised Statutes, section 3309, upon the receipt of the return of the distiller in each month, to proceed to inquire and determine whether the distiller has accounted for all the grain or molasses *used*, and all the spirits *produced* by him in the preceding month, and also whether he has used any grain or molasses in excess of the capacity of his distillery as estimated according to law.

Special No. 165, bearing date September 6, 1875, proceeds upon the idea that a proper construction of the word *used*, in respect to grain or molasses mashed, is that such grain or molasses is used when alcoholic spirits, having been properly developed, are separated therefrom by distillation, and, to enforce this construction, declares that, in making this inquiry and determination, the quantity of material used each month would be ascertained by adding the quantity of material on hand in mash or beer at the beginning of the month to the quantity put into mash during the month, and deducting from the total the quantity on hand in mash or beer at the end of the month, the remainder being the quantity used during the month.

Under this rule, which is still in force, the material distilled during the month, being the sum of the various quantities distilled on the several working-days of the month, is held to be the quantity of material *used* during the month.

The total capacity of the distillery for the month (expressed in bushels of grain or gallons of molasses, as the case may be) is the sum of the different daily capacities of the distillery for the several working-days of the month.

The inquiry and determination as to the excessive use of material which the Commissioner is required by law to make, is not a matter of discretion, but rests solely in computation, and consists in an arithmetical comparison of the quantity of material so found to have been used with the total capacity of the distillery for the month in question.

It will be observed that if the capacity of the distillery on each working-day has been exactly equal to the material used—that is, *distilled* on that day—then the total capacity will equal the total material used, and no excess of material will be found; but if the capacity has on any day or days been less than the quantity of material used—that is, *distilled* on such day or days—then, unless there has been a corresponding and equal overplus of capacity on some other day or days of the same month, the total capacity will not equal the total material used, and an excessive use of material will be found, for which the statute requires an assessment to be made.

It will be further observed that when a distiller desires to reduce or suspend production, and commences mashing a smaller quantity of material daily, or ceases mashing altogether, he cannot safely diminish capacity by closing the unused fermenting-tubs until the larger quantities of material previously mashed have been distilled, because, unless the aggregate capacity for the month equals the total material distilled during the month, an excess of material used must result, and be followed by an assessment equal to the tax on the spirits that should be produced from the quantity of grain used in excess of the capacity of the distillery for such month.

By preserving the larger capacity, the distiller will not unduly expose himself to a deficiency in the production of spirits, because the material distilled will be equal to the capacity maintained during distillation, and if a deficiency occurs, it will result from a failure to produce 80 per cent. of the amount of spirits required by the survey of such distillery to be produced from a bushel of grain or a gallon of molasses.

When a change is made in the *kind* of material used, the change of capacity resulting therefrom will be deemed to take place on the day when the new material is distilled, so that the material and capacity may balance each other.

A careful observance of the instructions and explanations contained herein will, it is believed, prevent distillers from incurring assessments for excessive use of material arising from any reasonable misapprehension as to what their duties and liabilities are, and to this end you are requested to place a copy of this letter in the hands of every deputy collector, storekeeper, "storekeeper and gauger," and grain or molasses distiller in your district, and for this purpose you will make immediate requisition for a sufficient number of copies, and distribute them at once upon receipt thereof.

GREEN B. RAUM,
Commissioner.

Regulations prescribed by the Secretary of the Treasury, January 12, 1866, in relation to refunding taxes:

* * * * *

"7th. When the case of an appeal involves an amount exceeding two hundred and fifty dollars, and before it is finally decided, the Commissioner of Internal Revenue will transmit the case, with the evidence in support of it, to the Secretary of the Treasury for his consideration and advisement."

IN THE MATTER OF REFUNDING INTERNAL-REVENUE TAX.—SAVINGS-BANK CASE.*

1. A claim for a refund of internal-revenue tax, under the Revised Statutes, sec. 3220, must "be presented to the *Commissioner* of Internal Revenue within two years next after" payment thereof, (sec. 3228;) else, it cannot be lawfully allowed.
2. It is not sufficient that such claim be presented to a collector of internal revenue within two years. (*Andreae vs. Redfield*, 98 U. S., 225.)
3. The *allowance* of such claim by the *Commissioner* of Internal Revenue is not *conclusive* on the question whether it was presented to him within two years.
4. The First Comptroller is charged with the duty of determining whether payment of such claim "is warranted by law;" and he is authorized to decide every *fact*, affecting the jurisdiction of the Commissioner, which may be necessary in order to ascertain whether the claim can be lawfully paid.
5. The decision in the case of the *First National Bank of Greencastle vs. The United States*, (15 Ct. Cls., 225,) considered.
6. The decision in *U. S. vs. Kaufman* (96 U. S., 567) is not applicable to the case of an allowance of a claim by the Commissioner of Internal Revenue, upon the facts of which arises a question of law to be decided by the First Comptroller. (House Ex. Doc. 27, 2d Sess. 45th Cong., 43.)

July 10, 1878, the Real-Estate Savings Bank of Pittsburgh paid \$972 69, as tax on deposits, to the collector of internal revenue of the twenty-second district of Pennsylvania. The deposits on which this tax was paid were exempt therefrom by the act of June 6, 1874. (18 Stats., 80.) *July* 9, 1880, the bank applied to said *collector* for a refund of this sum under section 3220 of the Revised Statutes; the application was received at the office of the *Commissioner* of Internal Revenue *July* 17; was favorably considered by the Secretary of the Treasury October 18, and allowed by the Commissioner October 21; and October 25, 1880, the Fifth Auditor "examined and adjusted an account," in favor of the bank, for \$972 69, payable out of the appropriation made by the Revised Statutes, section 3689, for "refunding taxes illegally collected, (internal revenue.)"

* See Davis's case, *post*, 258.

Among the regulations prescribed by the Secretary of the Treasury, and promulgated by the Commissioner, are the following:

Limitation of Time as to Claims for Refunding.

TREASURY DEPARTMENT,
Office of Internal Revenue, Washington, August 3, 1869.

The following regulation, prescribed by the Secretary of the Treasury, is published for the information of officers of internal revenue, and all others whom it may concern.

C. DELANO,
Commissioner.

—
TREASURY DEPARTMENT,
Washington, August 3, 1869.

The following additional regulation, relating to claims for the refunding of taxes, is hereby prescribed:

No claim or application hereafter made for the refunding of taxes will be entitled to consideration by the Commissioner of Internal Revenue, unless the same shall be filed with the Commissioner within two years from the date of the payment of the tax, or, in case of claims already accrued, within two years from this date.

WILLIAM A. RICHARDSON,
Acting Secretary of the Treasury.

—
TREASURY DEPARTMENT,
Washington, January 21, 1871.

* * * * *
RULE OF LIMITATION.

"No claim or application for the refunding of taxes will be entitled to consideration by the Commissioner of Internal Revenue, unless the same shall be filed with him either prior to August 4, 1871, or within two years from the date of the payment of the tax. (Circular No. 79.)

* * * * *
"GEO. S. BOUTWELL,
"Secretary of the Treasury."

—
The account, and papers therewith, are referred to the First Comptroller, to certify a balance due.

—
DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

The Revised Statutes contain provisions as follow:

"SEC. 3220. The Commissioner of Internal Revenue, *subject to regulations prescribed by the Secretary of the Treasury*, is authorized, on appeal to him made, to remit, refund, and pay back all taxes erroneously or illegally assessed or collected. * * *

"SEC. 3228. All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected * * * must be presented to the Commissioner of Internal Revenue within two years next after the cause of the action accrued. * * *" (13 Stats., 239; 14 *Ib.*, 111; 17 *Ib.*, 257; R. S. 3226, 3227.)

The "regulations" of the Treasury Department require that—

"Claims for the refunding of taxes erroneously assessed and collected should be presented through the collectors of the respective districts."

This claim was *not* presented *to the Commissioner of Internal Revenue* within two years next after the cause of action accrued. A presentation to a *collector* within two years is not a presentation to the *Commissioner*. The statute says that claims must be presented "*to the Commissioner*." The claimant had a right by force of the *statute* to present his claim *directly* to the Commissioner of Internal Revenue. He "had an equal right with the Secretary of the Treasury to construe the law." (*Nichols vs. U. S.*, 7 Wall., 127.) If he chose to avail himself of the *privilege* (for it could properly have been no more) accorded by the "regulation," he did so at his own risk. His statutory *right* could not be taken away. Executive officers have no power to dispense with the plain language of statutes. It is to be presumed that Congress knew the force of language, and purposely employed the words used in this statute. Executive officers should scrupulously respect the will of Congress, and leave that enlightened body to afford relief, if deemed proper, in cases not provided for by existing laws. (14 Op., 615.) The language of an act of Congress should not be carried beyond its fair meaning. In *Leavenworth Railroad Company vs. United States*, (92 U. S., 751,) Mr. Justice Davis, delivering the opinion of the court, said:

"Statutes must rest on the *words used*—'nothing adding thereto, nothing diminishing.' In *Rex vs. Barrell*, 12 Ad. & Ell., 468, Patterson, J., said: 'I see the necessity of not importing into statutes words which are not found there. Such a mode of interpretation only gives occasion to endless difficulty.' Courts have always treated the subject in the same way when asked to supply words in order to give a statute a particular meaning, which it would not bear without them. (*Rex vs. Poor Law Comm'rs*, 6 Ad. & Ell., 7; *Everett vs. Wells*, 2 Scott, N. C., 531; *Green vs. Wood*, 7 Q. B., 178.)"

The statute makes it a duty of the Commissioner to *receive* claims within two years. An executive officer cannot *delegate this power*. (*Nichols vs. U. S.*, 7 Wall., 122.)

In the case of the *First National Bank of Greencastle vs. The United States*, (15 Ct. Cls., 225,) it was decided that the certificate of allowance of the Commissioner of Internal Revenue on a claim for refund of taxes, under section 3220 of the Revised Statutes, fixes the liability of the United States; and that this allowance cannot be set aside by the accounting officers of the Treasury Department, except for fraud, want of jurisdiction, mistake apparent upon the certificate, or such irregularity as would avoid an award by arbitrators; "but not for mistake of judgment in the weighing and giving force and effect to evidence." It was

also laid down in that case that the Commissioner's decision, as to whether or not a claim reached his office in due time, could not be set aside by that court, in the absence of fraud or irregularity; and that neither the First Comptroller nor the Secretary of the Treasury "has authority to review the evidence upon which the Commissioner acted in making such allowances, nor to overrule his findings in matters which the *law* intrusts to his individual judgment."

So far as the question of the limitation arising under section 3228 of the Revised Statutes is concerned, and there is a denial of the authority and duty of the First Comptroller to determine for himself, before certifying a balance due, whether any claim for refund, upon which an account has been stated by the Auditor, is barred by that section, by reason of non-compliance with its provisions, the conclusion of the court in that case cannot be accepted. That conclusion would require the final accounting officer of the Treasury to abdicate the powers expressly given, and relinquish the duties imposed upon, him by statute. The laws which clothe him with jurisdiction and charge him with responsibility are no more to be disregarded than those under which the Commissioner of Internal Revenue submits to the accounting officers, with his opinion thereon, such claims as the one now under consideration. In *McKnight vs. United States* (13 Ct. Cls., 309) it was ruled by the same court that the decision of the Commissioner of Internal Revenue is *prima facie* evidence of a demand; and the general reasoning in that ruling shows that such decision is not *conclusive*.

It is the duty of the First Comptroller "to countersign all warrants drawn by the Secretary of the Treasury, which shall be *warranted by law*." (R. S., 269.) This claim cannot be paid without such warrant.

When the statute says that this claim, in order to be entitled to allowance, "must be presented to the Commissioner of Internal-Revenue *within two years*," the effect is, that he has *no power*—as the Court of Claims has said, "for want of jurisdiction"—to allow it if it has not been presented within that period. The statute goes to the power to allow; an executive officer has no authority to waive the statutory limitation. He has no power to do that which the law forbids or does not authorize. (*Kendall vs. U. S.*, 12 Pet., 525.) When an officer has no jurisdiction of a subject, his acts are *ultra vires* and void. Whatever may be the power of the Commissioner in passing upon a matter over which he has exclusive jurisdiction, his decision on a subject involving the payment of money out of an appropriation made by Congress is by no means *final*.

This claim cannot be paid until an account is "settled and adjusted," and a warrant for payment duly approved and signed. (R. S., 236, 277.)

The Revised Statutes provide—

“SEC. 269. It shall be the duty of the First Comptroller * * * to countersign all warrants drawn by the Secretary of the Treasury, which shall be warranted by law.”

This provision makes it the duty of the First Comptroller to determine whether the payment of this claim is “*warranted by law.*”

Other provisions require this claim to be audited. (R. S., 236, 248, 277, &c.) These provisions, as to the duty of the Fifth Auditor and Comptroller, are in full force, and are to be construed in connection with those giving power to the Commissioner of Internal Revenue, and effect is to be given to all. This rule of construction is familiar to every legal mind. It is not necessary to inquire whether, under it, there is a revisory power over the Commissioner as to the *amount* proper to allow on claims of this class. (Kaufman's case, 11 Ct. Cls., 659; Woolner's case, 13 *Ib.*, 355; 2 Op., 302; 3 Op., 663; 5 Op., 630; 7 Op., 724; 8 Op., 297; 10 Op., 435; 15 Op., 292; Davis's case, *post*, 261; Bender's case, *post*, 317.) If it be conceded that his judgment is final as to *this*, still the First Comptroller must decide whether payment of that amount is “*warranted by law.*” The duty to make this inquiry carries with it the power to ascertain all *facts* necessary to determine it. Laws which confer authority “are to be so construed as to include all the necessary means of executing them with effect.” (Howard *vs.* Baillie, 2 H. Bl., 620; 3 Chitty, Comm. and Manuf., 200, 201; Withington *vs.* Herring, 5 Bing., 442; 1 Bell, Comm., 387, ed. 4; Rogers *vs.* Kneeland, 10 Wend., 218; Peck *vs.* Harriott, 6 S. & R., 146.) They include the various means which are justified or allowed by usage. (Story, Agency, secs. 58, 60, 77, 97, 98, 101–106; Paley, 198, *n.*, ed. 3, by Lloyd; Livermore, 103, 104, ed. 1818; Ekins *vs.* Macklish, Ambler, 184–186.)

The Commissioner of Internal Revenue, in such matters as that now under consideration, exercises a special, statutory, and limited authority. When such authority depends upon the existence of a fact, (as, *e. g.*, the presentation of a claim to him within two years from the accruing of the right of action,) his finding thereon is not conclusive.

The principle here stated follows the analogy of many cases. (Moore *vs.* Starks, 1 Ohio St., 369; 12 *Ib.*, 635; 17 *Ib.*, 608; Graves *vs.* Otis, 2 Hill, 466; Sharp *vs.* Speir, 4 *Ib.*, 76; Sharp *vs.* Johnson, *Id.*, 92; 5 *Ib.*, 327; The People *vs.* Cline, 23 Barb., 197; The People *vs.* Van Alstyne, 32 *Ib.*, 131; The People *vs.* Goodwin, 5 N. Y., 568; 9 N. Y., 274; 10 N. Y., 328; 23 N. Y., 439; 1 Kern., 33; 2 *Ib.*, 575; 12 Wend., 102; 10 Johns., 161; 1 Denio, 331; 3 Bush, 698; Seatt *vs.* Vine, 30 L. J. M. C., 207; Legge *vs.* Pardoe, *Id.*, 108; *In re* Baker, E. B. & E., 862; 8 E. &

B., 629; 33 L. J. M. C., 131; 31 L. J. M. C., 153; *Crepps vs. Durden*, 1 Smith's Lead. Cas., 705, and cases cited.)

The right to review the finding of the Commissioner of Internal Revenue upon such question of fact, by those who are called upon to ascertain whether payments may be *lawfully made* in pursuance thereof, is well supported by the analogy of authorities. (*Corry vs. Gaynor*, 22 Ohio St., 584; 20 *Ib.*, 349; *Hayes vs. Jones*, 27 *Ib.*, 218; *Roberts vs. Easton*, 1 Disney, Ohio, 195; s. c., 19 *Ib.*, 78; *People vs. Compton et al.*, 1 Duer, 512; *Davis vs. The Mayor of New York*, *Id.*, 451; *People vs. Sturtevant*, 9 N. Y., 263; *Belknap vs. Belknap*, 2 Johns. Ch., 463; *Mohawk and Hudson R. R. Co. vs. Archer*, 6 Paige, 83; 2 Story, Eq., 11th ed., secs. 925-927; *Hush vs. Trustees*, 1 Vesey, 188; *Shadd vs. Aberdeen*, 2 Dow, 519; *Ager vs. Regents*, Cooper, Eq., 77; *Blood vs. Sayre*, 17 Vt., 609; *Cable vs. Cooper*, 15 Johns., 157; 2 Hilliard, Torts, 173; *Doswell vs. Impey*, 1 B. & C., 169; *Miller vs. Seare*, 2 W. Bl., 1141; *Pease vs. Clayton*, 1 Best & Smith, 658; *Revill vs. Pettit*, 3 Met., Ky., 314; *Inos vs. Winspear*, 18 Cal., 397.)

• In such case as *this*, where there is a question of law as to the *jurisdiction* of the Commissioner of Internal Revenue, upon which the Fifth Auditor and First Comptroller are required by law to pass, the liability of the Government to make payment is not fixed until their action thereon affirms it. (Rev. Stats., 191, 236, 269; 12 Ct. Cls., 326; 12 Op., 43.) Until this claim has passed the ordeal of the Fifth Auditor and First Comptroller, the claimant has not pursued the statutory remedy *to the end*. The Treasurer cannot pay *such* claim simply on the allowance of the Commissioner. The law requires the judgment thereon of the proper Auditor and First Comptroller; these cannot be ignored. How can it be said that the *allowance* of the Commissioner raises an implied promise or creates a liability on the part of the Government to pay, before their action? Payment before this would be without authority of law.

If the First Comptroller has no right to exercise judgment and discretion, but is to act *ministerially* only in certifying a balance due, the question would arise, upon his refusal so to certify, whether there is a remedy by *mandamus*; but, until his action is had, the forms which fix the liability of the Government are not complied with. This is well settled. (*Brashear vs. Mason*, 6 How., 92; *Decatur vs. Paulding*, 14 Pet., 515; *Brain's case*, 6 Ct. Cls., 172.) The case of *United States vs. Kaufman* (96 U. S., 567) is different from that now under discussion. There are some considerations which show that Congress did not intend that any liability should be created against the Government, in such case as this, without a decision by the First Comptroller certifying a liability. (See House Ex. Doc., No. 27, 2d Sess. 45th Cong., 43.)

It is not intended to assume any authority or arrogate any importance not given by law; but, for the purpose of showing the want of power on the part of the Commissioner of Internal Revenue, by his allowance *alone*, to charge the Government with liability, it is necessary to refer to the authority given by law to the First Comptroller, and which he has no power to waive, modify, or omit to exercise. He is the law officer of last resort in the Treasury Department. No money can be paid from the Treasury without his approval. (Rev. Stats., 269, cl. 3; secs. 305, 3698; *ante*, 74.) His decision on questions of law over which he has jurisdiction cannot be overruled, in any case, by the Secretary of the Treasury, the Attorney-General, or even the President. (Rev. Stats., 191; 12 Ct. Cls., 326; 12 Op., 43.) On *such* questions he may overrule the action of the Secretary, and disregard the opinion of the Attorney-General, even when given in answer to a request from the head of a Department. (R. S., 191, 356.)

It is repugnant to reason to suppose that Congress, after expressly revoking, in the act of March 3, 1865, (13 Stats., 483, sec. 3,) the pre-existing power of the Commissioner to pay such claims as the present one, intended to give to the *allowance* of these claims by him a *conclusive* effect; for this would give his judgment on a question of law supremacy over the judgment of the regular law officer of the Treasury Department, and reduce the latter to the status of a mere *ministerial* officer as to such claims. (U. S. *vs.* Ross, 92 U. S., 281; U. S. *vs.* Pugh, 99 U. S., 270.) Besides the inherent improbability that Congress so intended, such construction would, as to this class of cases, work a repeal of the chief object of the statutes which prescribe the duties of the First Comptroller. There is no repeal *in terms* of sections 191, 236, 269, of the Revised Statutes, by sections 3220, 3226, 3227, and 3228; and, on well-settled principles, there can be none by *implication*. These latter sections merely give an *authority* to the Commissioner to allow claims for a refund of taxes erroneously or illegally assessed or collected, *subject to the revision*, respectively, of the Fifth Auditor and First Comptroller. The words to "remit, refund, and pay back," in section 3220, are qualified as to the power of the Commissioner by, and have relation to, sections 191, 236, 269, and 277 of the Revised Statutes. A *literal* construction of section 3220 would lead to the *reductio ad absurdum* of requiring the Commissioner to "pay back" money covered into the Treasury. The section, to be operative, must be construed with reference to the provisions of law requiring the usual forms to be pursued to secure payment. The effect of a different construction must be apparent. There are many statutes authorizing various officers to allow claims; but their allowances are subject to the revisory action of

the proper accounting officers of the Treasury Department. If they were not subject to that action, a multitude of claims would be without that examination, audit, and revision which have been deemed by Congress essential, in order to protect the interests as well of the Government as of honest claimants.

The question whether this claim was "presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued," as required by section 3228 of the Revised Statutes, is a *question of law* arising on the facts; and to say that the decision of the Commissioner on this question of law is final, is to say that the First Comptroller has no power in this case to determine whether the issue of a warrant for payment of the claim is "warranted by law."

The First Comptroller must decide such questions as this, until a court of last resort has otherwise determined. (*Com. vs. Whiteley*, 4 Wall., 522; *Gaines vs. Thompson*, 7 Wall., 351; *Decatur vs. Paulding*, 14 Pet., 515; *U. S. vs. Lytle*, 5 McL., 9; *Police case, ante*, 64.)

No balance is due on the account stated by the Fifth Auditor.

TREASURY DEPARTMENT,

First Comptroller's Office, November 10, 1880.



IN THE MATTER OF PAYMENT OF LIGHT-HOUSE KEEPERS. INSPECTORS' CASE.

1. The powers of executive officers are derived from and their duties prescribed by the Constitution, or laws in pursuance thereof.
2. Many powers are incidental and result from general provisions or definitions in acts of Congress, as necessary and proper to carry out their objects.
3. Regulations prescribed in pursuance of authority given by law have the force and effect of law.
4. Usage sufficiently continued gives construction to laws.
5. The President may, by executive order, adopted by the Light-House Board as a regulation, with the approval of the Secretary of the Treasury, transfer from collectors of customs to light-house inspectors the duty of paying salaries to keepers of light-houses.
6. Construction given to Revised Statutes, sections 161, 248, 285, 1153, 1563, 3614, 3648, 3672, 4669, 4672; act June 16, 1880, (21 Stats., 262.)

On October 23, 1880, the Light-House Board addressed a letter to the Secretary of the Treasury, expressing a desire to revise the regulations (Rev. Stats., 4669) of the Light-House Establishment, and saying:

"In this connection the board has the honor to call your attention to that part of the regulations devolving the duty of paying light-keepers' salaries on those collectors of customs acting as superintendents of lights, and to ask authority to so change the regulations as to devolve this duty on light-house inspectors.

"In your annual report of 1877 you suggested, (page 44,) 'that considerable expense in the conduct of the Light-House Establishment might be saved by vesting the light-house inspectors with authority to make, upon their periodical visits to the stations, the disbursements which are now made by the collectors of customs acting as superintendents of lights.'

"Congress responded to this suggestion by repealing so much of section 4672, Revised Statutes, as provides compensation to collectors of customs as superintendents of lights, or as disbursing agents for the Light-House Establishment, (act June 16, 1880,) which was the only act recognizing the payment of light-keepers by collectors.

"There are now sixty-five collectors who are acting, without compensation, as disbursing agents for the Light-House Establishment by paying light-keepers, and who have accounts as such with this office.

The light-house inspectors are officers of the Navy, and have been constituted disbursing officers by Executive order of 15th June, 1877, filed with the First Comptroller. Each inspector is required to visit and inspect each light-station in his district quarterly. He could, at that time, pay each light-keeper connected with that station. This would, as stated in your report, 'relieve many keepers from the trouble and cost incident to the journeys they are now compelled to make to obtain their salaries, beside preventing the detriment to the service involved in their absence on such occasions from their posts of duty.

"It does not appear that the relief of collectors from the uncompensated duty of acting as disbursing agents for the Light-House Establishment will, in any way, interfere with their privilege of nominating persons for employment in the Light-House Service."

President Pierce made, as shown by the papers connected therewith, an Executive order, under the act of January 31, 1823, (3 Stats., 723, now Rev. Stats. 3648,) as follows:

WASHINGTON, *March 22, 1853.*

I hereby direct that such advances be made, from to time, to the disbursing officers above named as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfilment of the public engagements; but in no case where the agent is to give security shall the amount in his hands at any one time exceed the amount of his security.

FRANKLIN PIERCE.

The usage on this subject is further shown by the following:

TREASURY DEPARTMENT, FIRST COMPTROLLER'S OFFICE,
Washington, D. C., September 8, 1873.

THE PRESIDENT: I have the honor to enclose herewith a copy of a communication, addressed by the President to the Comptroller, March 11, 1869, and to say that, by the construction placed upon the communication, officers of the Army and Navy acting as engineers or inspectors in the Light-House Service are not included as officers to whom advances are to be made.

The Light-House Board inform me, that for convenience and efficacy of the service, it is necessary that the moneys be advanced to the officers named, and that as these officers, in discharge of their duties as inspectors and engineers, regularly visit light-stations, the disbursements

will be made with greater economy as well as regularity. If the President concurs, I respectfully request that authority be given, and enclose a memorandum of a form in which it may be put. The Secretary's signature to the memorandum signifies his approval.

Respectfully submitted:

R. W. TAYLER,
Comptroller.

Permission is hereby given that needful advances of moneys appropriated for the Light-House Establishment may be made to officers of the Army and Navy, acting as engineers or inspectors in the Light-House Service.

W. A. RICHARDSON,
Secretary.

SEPTEMBER 8, 1873.

Approved:

U. S. GRANT.

SEPTEMBER 10, 1873.

EXECUTIVE MANSION,
Washington, D. C., June 15, 1877.

Under authority of section 3648 of the Revised Statutes of the United States, permission is hereby given that needful advances of money be made to disbursing officers in the civil service of the Government who may have given bonds as required by law, to such military and naval officers as may by law be authorized to disburse the same, of moneys appropriated for the Light-House Establishment, to officers of the Army and Navy, acting as engineers or inspectors in that service, and to the bankers of the United States in London.

R. B. HAYES.

Filed in office of First Comptroller, No. 9468, B. 18.

November 4, 1880, the Secretary of the Treasury requested the First Comptroller to advise him—

“Whether there is any law which prevents inspectors of the Light-House Service from acting as disbursing officers in the way proposed.”

Briefs were submitted on behalf of the Light-House Board as follows:

Question. Can the Secretary of the Treasury properly transfer the duty of paying salaries to keepers of light-houses, from collectors of customs, to light-house inspectors?

I.—This request of the Light-House Board is not to have light-house inspectors and engineers *appointed* disbursing agents, but simply to transfer disbursements, from collectors of customs, to such light-house inspectors as are already acting as disbursing agents under orders heretofore issued.

II.—Light-house inspectors and engineers have been acting as disbursing agents for the Light-House Establishment for about thirty years. Section 3614, Revised Statutes, (by implication, at least,) permits them to so act without giving bond. President Pierce, in his Executive order of March 22, 1853, recognized the fact that bonds are not required from certain disbursing officers.

III.—The authority of law for appointing light-house inspectors and

engineers disbursing officers is found in sections 3614 and 3648, and 1153 and 1563, Revised Statutes.

IV.—Examination shows Executive orders on file as far back as 1853. That of 1873 appears to have omitted the authority for advances to officers on light-house duty, and a separate order was issued at request of the First Comptroller, authorizing advances to them. (September 8, 1873.)

V.—These officers of the Light-House Establishment are certainly, in the language of the law, "employed on distant stations," and are not readily accessible to the ordinary disbursing officers. Furthermore, Congress has recently, in response to a suggestion contained in the report of the Secretary of the Treasury, (see Finance Report, 1877,) repealed the law authorizing payment to collectors of customs making these disbursements. (Act June 16, 1880, 21 Stats., 262.) It would appear that Congress did not deem necessary any further authority of law to permit these disbursements to be made by the inspectors of the Light-House Board.

VI.—Can there be any doubt that the Secretary may direct inspectors of the Light-House Establishment (already acting as disbursing officers for large amounts under proper authority) to add to their duties the disbursement of small amounts quarterly to the keepers of light-houses, which they visit regularly on their tours of inspection?

E. W. CLARK,
Chief Rev. Mar. Div.

The superintendents of lights are not specifically charged by law with the disbursement of public funds belonging to the Light-House Establishment. They are disbursing agents in their capacities as collectors of customs, and the disbursement of light-house funds by them was only permissive, not mandatory.

Since these specific duties are not charged upon them by law, the duties may properly be assigned to other officers, provided that the convenience and exigency of the public service clearly demand it.

The decision in *Birch's case* [*ante*, 154] does not apply, as Birch was the agent distinctly authorized by law to make certain disbursements.

Sections 3614 and 3648, Revised Statutes, imply that officers of the Army and Navy may disburse funds when required to do so, and section 4669, Revised Statutes, provides that the Light-House Board, with the approval of the Secretary of the Treasury, shall prescribe regulations for securing an efficient, uniform, and economical administration of the Light-House Establishment. In pursuance of the authority conveyed by this statute, the Board has for many years been in the habit of prescribing to the inspectors of light-houses certain disbursements which can be more economically and efficiently made by them than by the superintendents of lights. Advances of public money on warrants issued by the Secretary of the Treasury, and approved by the First Comptroller, have been made to these inspectors, and they have disbursed the funds required.

The disbursements made by them could not, in some cases, be performed by the superintendents of lights without great additional expense and delay. On the Ohio and Mississippi rivers, for instance, there are no superintendents of lights, and it does not appear how it would be possible for the superintendents on the seaboard to make the disbursements at all, as the persons to whom most of the disbursements

are made are laborers employed in attending stake-lights at numerous stations scattered over at least 5,000 miles of inland waters.

Since there is no law forbidding officers of the Army and Navy, acting as inspectors and engineers, from disbursing, and the public service is clearly improved thereby, the long-continued practice of the Department is entitled to great consideration. Usage cannot alter the law, but is evidence of the construction given it.

GEO. DEWEY,
Naval Secretary, Light-House Board.

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The First Comptroller, WILLIAM LAWRENCE, advises as follows:

The Revised Statutes contain these provisions:

"SEC. 161. The head of each Department is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

"SEC. 4669. The Light-House Board, with the approval of the Secretary of the Treasury, shall prescribe, and from time to time may alter or amend, and cause to be distributed, such regulations as they deem proper for securing an efficient, uniform, and economical administration of the Light-House Establishment." (See sections 248, 285, 3648.)

It is certainly true, as was said in the case of the *Floyd Acceptances*, 7 Wall., 676, that—

"We have no officers in this Government, from the President down to the most subordinate agent, who does not hold office under the law, with prescribed duties and limited authority. And while some of these, as the President, the legislature, and the judiciary, exercise powers in some sense left to the more general definitions necessarily incident to fundamental law found in the Constitution, the larger portion of them are the creation of statutory law, with duties and powers prescribed and limited by that law."

It is also true, as was said in the *United States vs. Macdaniel*, 7 Pet., 1, that—

"A practical knowledge of the action of any one of the great Departments of the Government must convince every person that the head of a Department, in the distribution of its duties and responsibilities, is often compelled to exercise his discretion. He is limited in the exercise of his powers by the law; but it does not follow that he must show a statutory provision for everything he does. No government could be administered on such principles. To attempt to regulate by law the minute movements of every part of the complicated machinery of government would evince a most unpardonable ignorance on the subject. Whilst the great outlines of its movements may be marked out, and limitations imposed on the exercise of its powers, there are numberless things which must be done that can neither be anticipated nor defined, and which are essential to the proper action of the Government. Hence, of necessity, usages have been established in every department of the Government, which have become a kind of *common law*, and regulate the rights and

duties of those who act within their respective limits. And no change of such usages can have a retrospective effect, but must be limited to the future. Usage cannot alter the law, but it is evidence of the construction given to it, and must be considered binding on past transactions." (See *Converse vs. U. S.*, 21 How., 463.)

Usage has much force. (*Edwards vs. Darby*, 12 Wh., 210; s. p., *Ross vs. Barland*, 1 Pet., 666; 6 Pet., 39, 218; *Gratiot vs. U. S.*, 15 Pet., 336; 1 Bl. C. C., 218; 5 McL., 9; *Alexander's case*, 12 Wall., 177; *Pugh's case*, 99 U. S., 267.) Where the law confers an authority on an agent, it is, unless the contrary manifestly appears, "always construed to include all the necessary and usual means of executing it with effect." (Story, Agency, sec. 58; *Howard vs. Baillie*, 2 H. Bl., 618, 620; 3 Chitty, Comm. and Manuf., 200, 201; *Withington vs. Herring*, 5 Bing., 442; 1 Bell's Comm., 387, art. 412, 4th ed.; *Rogers vs. Kneeland*, 10 Wend., 218; *Peck vs. Harriott*, 6 S. & R., 146; 15 Op., 533; *Neilson vs. Lagow*, 12 How., 107; *U. S. vs. Jones*, 18 How., 92; *U. S. vs. McCall*, Gilp., 571.) It also includes the various means which are justified or allowed by usage. (Story, Agency, secs. 60, 77, 97, 98, 101-106; Paley, 3d ed., 198, n.; 1 Livermore, 103, 104, ed. 1818; *Ekins vs. Macklish*, Ambler, 184-186; *Converse vs. U. S.*, 21 How., 468; *Whiting's case*, 10 Op., 439.) The necessity of the power to prescribe regulations is apparent. Without it, it would be impossible to transact the business of the Department. The courts have recognized this necessity, and have given effect to the regulations. In the *United States vs. Barrows*, 1 Abbott's U. S. Reports, 351, it was decided that a regulation of the Treasury Department, made in pursuance of an act of Congress, becomes a part of the law, and is of the same force as if incorporated in the body of the act itself. (*Nichols vs. U. S.*, 7 Wall., 129.)

In brief, the whole matter may be thus stated: Light-house keepers are by law entitled to salaries; it is the duty of the Treasury Department to pay them, (Rev. Stats., 4673;) the law does not specifically provide the mode or agency for paying, (*Id.*, 4672;) the proper executive officers may therefore select the agencies requisite to perform the duty required of them by law.

The *superintendence* of the light-houses cannot be taken from collectors of customs, for *that* is fixed by law. (Rev. Stats., 4672.) But the law does not *require* these officers to pay the salaries.

In view of the usage to which reference has been made, the construction of laws implied in it, the general powers of the President and Secretary of the Treasury, and the authority to prescribe regulations conferred by the Revised Statutes, I respectfully advise that the President make an Executive order, to be, with the approval of the Secretary of

the Treasury, adopted as a regulation by the Light-House Board, transferring from collectors of customs to light-house inspectors the duty of paying salaries to keepers of light-houses, without compensation for such services. If desirable, it will be competent to require bonds, as from disbursing officers, for advances of money on accountable requisitions.* (Rev. Stats., 3614.)

TREASURY DEPARTMENT,

First Comptroller's Office, November 11, 1880.

November 12, 1880, pursuant to the above, an Executive order was issued as follows:

EXECUTIVE MANSION,
Washington, D. C., November 12, 1880.

It is ordered, that the duty of paying salaries to keepers of light-houses shall be, and is, transferred from collectors of customs to light-house inspectors, who shall hereafter perform all the duties which have been heretofore performed by collectors of customs in paying said salaries, and that needful advances of moneys appropriated for the purpose may be made to make such payments, no compensation to be allowed for making such payments.

R. B. HAYES.

It is ordered by the Light-House Board, with the approval of the Secretary of the Treasury, that the foregoing Executive order be, and is, adopted as a regulation of the Light-House Establishment.

By order of the Light-House Board:

JOHN RODGERS,
Rear-Admiral U. S. N., President Light-House Board.

Approved:

JOHN SHERMAN,
Secretary of the Treasury.

Approved:

WILLIAM LAWRENCE,
First Comptroller of the Treasury.

* As to settlement of accounts of disbursing officers, see act March 3, 1875, (18 Stats., 418, sec. 5; 6 Op., 24.)

IN THE MATTER OF PAYMENT TO THE WRONG PARTY.— PUTNAM'S CASE.

1. Where it was fraudulently represented to the Treasury Department that a Government coupon bond had been destroyed, and that when so destroyed it was owned by a party named, payment to such party of such bond by the Treasury Department will not deprive another person, the *bond fide* owner of the bond, of the right to payment.
2. The payment to such fraudulent claimant does not operate to exhaust so much of the permanent appropriation made for the payment of the public debt as has been so applied, and thus make *pro tanto* a new appropriation necessary. The appropriations for payment of the public debt are of moneys sufficient to pay bonds which are called in for payment.
3. As to other appropriations of specific sums for purposes stated, a payment by mistake to a fraudulent claimant cannot deprive a rightful claimant of his title to payment. In such case the erroneous payment could not be charged to the appropriation, so as to exclude the rightful claimant from payment, but should go to an account for appropriation by Congress.

On November 11, 1876, the surrogate of Queen's county, New York, issued letters of administration to Hamilton B. Russell, of the town of New Town, on the estate of Mary McDonald, deceased, "of which town [as the letters state] she was an inhabitant at the time of her death."

In November, 1876, Russell filed in the Treasury Department his letters of administration, with an application for the payment to him, as administrator, of United States coupon bond No. 1716, for \$500, first series, issued under act of February 25, 1862, with coupons for interest.

In his affidavit, in support of the application, he alleged that the bond was the property of said intestate, and that she, on the 25th of January, 1870, delivered the bond in the presence of witnesses, whose affidavits accompanied the application, to Duncan McDonald, a kinsman of hers, who was a passenger on the steamship "City of Boston," of the Inman line, then lying at the port of New York, which was that day to sail for Liverpool; that the bond was received by this kinsman to be delivered to a banker or law firm in London, to be held for the benefit of James McDonald, her son; that the steamer, with all on board, went down in a great gale soon afterwards, and none of their effects were recovered.

Upon the evidence presented by Russell of the destruction of the bond, and of its having been at the time the property of Mary McDonald, the First Comptroller, on the 8th of January, 1877, directed that the bond should be redeemed in his (Russell's) favor, upon the execution by him of an indemnity bond, with sureties, in the usual form.

The indemnity bond having been executed, the amount of the coupon bond and coupons, all alleged to have been destroyed, was paid to him, January 20, 1877, out of the permanent appropriation made for the redemption of that class of bonds.

Before payment, the Secretary of the Treasury took the opinion of the Solicitor of the Treasury, as follows:

DEPARTMENT OF JUSTICE,
Office of the Solicitor of the Treasury,
Washington, D. C., January 9, 1877.

SIR: I have examined this case and the evidence adduced carefully.
* * * * *

This being a coupon bond, passing by delivery, the law requires that the proof shall be "clear and unequivocal" of *destruction*, without bad faith on the part of the owner; and bond of indemnity to be filed to procure duplicate or payment.

The evidence shows that the steamer "City of Boston" sailed from New York on the 25th day of January, 1870, and this bond, in the possession of Duncan McDonald, was on board, and that the said steamer has never since been heard from.

I think, from the facts and lapse of time, a presumption of law arises of destruction as "clear and unequivocal" as absolute proof. I therefore concur in the recommendation of the Comptroller (the Government securities of this class being called) that it should be paid upon filing bond of indemnity in pursuance of law.

Very respectfully,

GEORGE F. TALBOT,
Solicitor of the Treasury.

Hon. LOT M. MORRILL,
Secretary of the Treasury.

On December 27, 1879, the cashier of the City National Bank of Grand Rapids, Michigan, presented the original bond, with coupons attached, for payment, on behalf of Samuel D. Putnam, with evidence which shows that Putnam had been the owner of the bond since the year 1862 or 1863, and that he was in no way connected with or responsible for the fraud of Russell.

DECISION BY WILLIAM LAWRENCE, *First Comptroller:*

The question now presented is, whether, notwithstanding the payment made to Russell, the bond itself, which is now presented by Mr. Putnam, the *bond fide* holder, may be redeemed in his favor without a further appropriation by Congress.

This question was considered by my immediate predecessor, who, in part, prepared an opinion, most of which I have adopted.

A question substantially like this was, on the 12th of October, 1878,

submitted by the Secretary of the Treasury to the Attorney-General for an opinion. Alexander Anderson, of Augusta county, Va., filed his claim under the act of March 3, 1871, appointing commissioners to examine and report to Congress upon claims of loyal citizens for supplies furnished to the army during the rebellion. He described himself in his application as Alexander Anderson, of Augusta county, Va. The commissioners reported favorably on his claim, along with others, stating the amount due him to be \$175. Congress adopted the report of the commissioners and passed the act of March 3, 1873, (17 Stats., 741, 757,) authorizing and requiring the Secretary of the Treasury to pay, among other claims, \$175, out of moneys in the Treasury not otherwise appropriated, to Alexander Anderson, of Virginia. Alexander Anderson, of Amelia county, Va., had also presented a claim to the commissioners, but it had not been allowed. On the 13th of March, 1873, he executed to H. G. Fant, of Washington City, a power of attorney to receive for him the \$175 allowed by the act to Alexander Anderson, of Virginia. In the power he described himself as Alexander Anderson, of Amelia Court-house, of the county of Amelia, in the State of Virginia. On filing this power, Mr. Fant received this money for his principal, the account having first passed all the accustomed formalities of examination and settlement. Fant acted with entire good faith, and was not informed of the mistake until after he had paid the money to the attorney of his principal; and it is believed that the principal acted in good faith also, supposing that the claim allowed and appropriated for was his own.

Among the questions presented to the Attorney-General in that case was this: Whether the proceedings above referred to deprived the real claimant, who took no part therein, and had no knowledge thereof, of the right to be paid out of any money in the Treasury not otherwise appropriated. The Attorney-General answered that they did not, and that the fund appropriated by the act for the payment of said claim was no more exhausted by the loss of the money from its being paid out by mistake, than it would have been by the robbery of it from the Treasury vaults, or by embezzlement of it by an employé at the Department. The Attorney-General said:

“The act, in connection with the commissioners' report, to which it refers, with which it must be read, directs the payment of \$175 to Alexander Anderson, of Augusta county, Virginia, out of any money not otherwise appropriated; and the act is not complied with until its payment is made. So long, therefore, as there are in the Treasury funds not otherwise appropriated, they may be used for the payment of the claims.”

The Attorney-General added that there was no legal objection to a second appropriation warrant being issued to again place the amount due the rightful claimant to the credit of the Secretary of War; that he might draw a new requisition, on which a new warrant could issue in payment of the claim: and he further declared that he did not perceive that any embarrassment would be caused in the accounts of the Secretary of War by the issuance of a second requisition—a second appropriation warrant from the Treasury operating as a credit to him for the identical amount.

Payment of the bond now presented for redemption was not by requirement of law to be made “out of any moneys in the Treasury not otherwise appropriated,” and in this respect the manner of payment differs from that in which payment was to be made in the case just cited. Provision is made for the payment of this bond by the fourth section of an act to authorize the refunding of the national debt, approved July 14, 1870. (16 Stats., 273.) The language of the appropriation is as follows:

“And be it further enacted, That the Secretary of the Treasury is hereby authorized, with any coin of the United States in the Treasury which he may lawfully apply to such purpose, or which may be derived from the sale of any of the bonds, the issue of which is provided for in this act, to buy at par and cancel any six per cent. bonds of the United States of the kind known as 5-20 bonds which have become, or shall hereafter become redeemable by the terms of their issue.”

The application of Russell for the redemption of the bond of which Mr. Putnam has always been the holder and owner, was founded upon the provisions of section 3702 of the Revised Statutes. That section provides that—

“Whenever it appears to the Secretary of the Treasury, by clear and unequivocal proof, that any interest-bearing bond of the United States has, without bad faith upon the part of the owner, been destroyed, wholly or in part, or so defaced as to impair its value to the owner, and such bond is identified by number and description, the Secretary of the Treasury shall, under such regulations and with such restrictions as to time and retention for security or otherwise as he may prescribe, issue a duplicate thereof, having the same time to run, bearing like interest as the bond so proved to have been destroyed or defaced, and so marked as to show the original number of the bond destroyed and the date thereof. But when such destroyed or defaced bonds appear to have been of such a class or series as has been or may, before such application, be called in for redemption, instead of issuing duplicates thereof, they shall be paid, with such interest only as would have been paid if they had been presented in accordance with such call.”

Section 3703 enacts that the owner of such destroyed bonds shall file in the Treasury a bond of indemnity, conditioned as therein specified.

That statute only authorizes a duplicate bond to be issued to the owner of the original bond. No person but the owner of the original bond, or his legal representative, has a right to have it redeemed in his favor. The owner of a bond is not deprived of his right to payment by the circumstance that another person, by fraudulently representing himself to be the owner, has induced the officers of the Treasury to allow his claim, and to pay the sum out of the appropriation available for the payment of the bond of the genuine owner. The genuine owner's bond is not thereby paid. If a sufficient amount of the sum appropriated for the class of bonds of which it is a part remains to pay it when, it having been called, he presents it for payment, he is entitled to payment out of this balance. The appropriation is no more exhausted with respect to his bond than it is exhausted with respect to any of the bonds of the same class which remain unpaid. His bond has no more been paid than any overdue bond of its class which has not been presented for payment. My predecessor has said as to this:

"If, when all the bonds of its class are presented, the appropriation should not be sufficient to redeem them, the appropriation must be held to have been exhausted only in respect of bonds representing that amount last presented."

But it cannot well be conceived how any such question can arise. The appropriation for the payment of the class of bonds now in question is, by act of July 14, 1870, of—

"Any coin of the United States in the Treasury * * * to buy at par, and cancel any six per cent. bonds," &c.

This includes always a sufficient sum to pay all bonds to the rightful owners. And so have been the appropriations for similar purposes. (Rev. Stats., 3689, 3693; 12 Stats., 346; 18 Stats., 371.)

The appropriation for the payment of interest on the public debt is in like manner indefinite in amount. (Rev. Stats., 3689.)

There never can be said to be a deficiency in the appropriation. Duplicate payments might, indeed, make the gross sum of payments exceed the gross sum of the bonds or of interest entitled to payment. But that could only raise a question whether the erroneous payment made to a fraudulent claimant should not be charged to some other account.

As to other appropriations made in a fixed amount for a specific purpose, a similar question might arise.

A payment erroneously made to a fraudulent claimant cannot deprive a rightful claimant of his title to payment. (Royle, *Law of Funds*, 6, London, 1875; *Davis vs. Bank of England*, 2 Bing., 393; 5 Barn. &

Cress., 185; Stone *vs.* Marsh, 6 *Id.*, 551; Cole *vs.* Bank, 10 Adol. & Ell., 437; Sloman *vs.* Bank, 14 Sim., 485; *Ex parte* Bolland, Mont. & Mac., 315; Hume *vs.* Bolland, Ryan & Mood., 371.) If the fraudulent payment, by being charged to the appropriation, would exhaust it, the charge should be transferred to some other account. If the law has made no provision for such case, as it has not, still the erroneous payment cannot properly stand charged to the appropriation, but must go to an account for appropriation by Congress.

—

The Secretary of the Treasury, by letter of October 30, 1880, to the First Comptroller, requested him to—

“Cause an account to be stated in favor of the Treasurer of the United States for said amount of the principal (\$500) and interest, (\$212 47,) to be reported to Congress for the necessary appropriation, under the act of June 14, 1878, to reimburse the appropriation from which payment was made.”

An account was stated and certified as follows:

[Copy.]

No. 27970.

Recorded —

TREASURY DEPARTMENT,
First Auditor's Office, November 5, 1880.

I hereby certify that I have examined and adjusted an account between the United States and James Gilfillan, Treasurer of the United States, and find that the sum of seven hundred and twelve dollars and forty-seven cents is due from the United States to him, being the amount of principal and interest of coupon bond No. 1716, for five hundred dollars, first series, issued under act of February 25, 1862, and paid to Hamilton B. Russell, administrator of the estate of Mary McDonald, dec'd, by fraudulent statements and affidavits of himself and others, asserting the destruction of said bond, under direction of the First Comptroller, dated January 18, 1877, viz:

Principal.....	\$500 00
Interest from Nov. 1, 1864, to Dec. 1, 1871.....	212 47
	<hr/>
	712 47
	<hr/>

For which sum (\$712 47) a warrant will issue in favor of James Gilfillan, Treasurer of the U. S., to reimburse his account with the Treasury, chargeable to the appropriation, act of June 14, 1878, as appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

R. M. REYNOLDS,
First Auditor.

\$712 47

To the COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.

I admit and certify the above balance, this eighth day of November, 1880, said sum to be reported to the Speaker of the House of Representatives for consideration, in pursuance of the act of June 14, 1878.

WILLIAM LAWRENCE, *Comptroller*.

To the REGISTER OF THE TREASURY.

It may be doubtful whether this certificate falls strictly within the act of June 14, 1878; but, whether it does or not, it is proper to be made.

In this case, the claimant is entitled to payment out of the appropriation for payment of the public debt.

TREASURY DEPARTMENT,

First Comptroller's Office, November 19, 1880.

IN THE MATTER OF THE FINDER OF A GOVERNMENT COUPON BOND.—SALLU'S CASE.

1. United States *coupon* bonds being payable to bearer, the title thereto passes by delivery. Possession even fraudulently obtained is *prima facie* evidence of ownership, and all persons not chargeable with knowledge of the fraud may safely purchase from the holder.
2. If the holder of *such* bond present it at the Treasury Department for payment, or for the issue of a new bond, and give notice of any defect in his title, payment to him will not relieve the Government from the duty of paying the rightful, legal owner.
3. When registered bonds are presented for transfer to an indorsee, the Government is bound at its peril to ascertain the genuineness of the assignment; and in transfers by operation of law, as in case of administration, bequest, &c., the Government is bound to ascertain the parties who, by *legal* right, are entitled to be inscribed as payees.
4. When the Government is chargeable with notice that the holder of a registered bond is, in respect thereof, a trustee, and of the character of the trust, it cannot properly permit a transfer in disregard of such trust.
5. Payment to a person who is not the owner of a registered bond, even though procured by false personation and with the possession of the bond, will not relieve the Government from liability to pay the rightful claimant, who has in no way participated in the fraud.
6. Payment or transfer of registry of a registered bond on a forged indorsement will not deprive the *bond fide* owner of the bond of his rights therein.
7. The law of the *domicile* determines distribution of the personal property in case of intestacy, testamentary disposition, sometimes insolvent assignments, and other transfers by operation of law; but it cannot change the contract made by the Government in the bond under its own laws.
8. The Secretary of the Treasury has authority to prescribe regulations, not inconsistent with law, for the transfer of registered bonds and the character of evidence required for that purpose.
9. In the absence of evidence showing what construction has been given by authoritative courts in Belgium to article 2279 of the civil code of that nation, the

words therein, "*movable objects*," will not be deemed to include Government bonds of the United States.

10. Judicial proceedings of a foreign country which undertake (1) to furnish *evidence of title*, as against a former owner, in the *holder*, by finding, of a coupon bond; or (2) by decree to divest the title of such former owner and invest it in such *finder*, will be deemed void unless notice, *actual* or *constructive*, has been given to such former owner.
11. In courts of general jurisdiction, if the record is silent, process may be presumed; but in tribunals of special, statutory, or limited jurisdiction, the record is void unless it show process served on or notice to parties to be affected thereby.
12. The decree of a competent judicial tribunal of a *foreign* country, on process or notice investing the *finder* and *holder* of a *coupon* bond of the United States with title thereto against a *former owner*, is, on principles of international *comity*, to be deemed valid in favor of such holder as against citizens or subjects of that country, but not as against citizens or subjects of other countries.
13. It will not be *presumed* that the party against whom such foreign decree is made is a citizen of the country in which it is so made, but such citizenship must be found by the decree or proved *aliunde*.
14. On general principles of the common and civil law, the *finder* of a Government bond acquires no title therein.
15. When the holder of a Government bond presents it at the Treasury for payment, with evidence showing him not to be the owner or entitled to payment, he has no right to a return of the bond to his custody. It is the duty of the Government to hold it, in order to protect the rights of the real owner until he demands it.

Under the acts of Congress of July 14, 1870, (16 Stats., 272,) and January 20, 1871, (16 Stats., 399,) United States Government bonds, bearing interest at 5 per cent. per annum, payable quarter-yearly, and redeemable at the Treasury of the United States, May 1, 1881, were issued, to the amount of \$299,127,200. They are of two classes: *registered* and *coupon*. Among the coupon bonds is one, No. 13654, for \$1,000, which was presented, somewhat mutilated, at the Treasury Department by Speyer & Co., of New York city, by letter of October 19, 1877, asking for the issue of a new bond on behalf of Pierre François Sallu, of Brussels, Belgium, claiming to be the owner.

The following is a copy of the bond, omitting coupons attached thereto:

INTEREST, {	FUNDED LOAN OF 1881.	} 5 PER CENT.
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No. 13654.

UNITED STATES OF AMERICA are indebted to the bearer in the sum of ONE THOUSAND DOLLARS.

This bond is issued in accordance with the provisions of an act of Congress entitled "An act to authorize the refunding of the national debt, approved July 14, 1870, amended by an act approved January 20, 1871," and is redeemable at the pleasure of the United States, after the first day of May A. D. 1881, in coin of the standard value of the United States on said July 14, 1870, with interest, in such coin, from the day of the date hereof, at the rate of FIVE PER CENTUM per annum,

payable quarterly, on the first day of February, May, August, and November, in each year. The principal and interest are exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form, by or under State, municipal, or local authority.

WASHINGTON, *May 1, 1871.*

Entered: H. C. Recorded: C. K. W. S.

JOHN ALLISON,
Register of the Treasury.

The following evidence is presented:

[Translation.]

COMMUNAL ADMINISTRATION OF BRUSSELS.

BUREAU OF FOUND OBJECTS.

Extract of Article 2279 of the Civil Code.

In the case of movable objects, the possession gives title. Nevertheless, he who has lost a thing, or from whom it has been stolen, can reclaim it during *three years*, beginning from the date of the loss or theft, from the party in whose hands he finds it, to whom the right of recourse to the person from whom he received it, is reserved.

This is a literal copy.

BRUSSELS, *June 26, 1880.*

Le Ss. Chef de Bureau:

L. DE MEYER.

—
BRUSSELS, *January 21, 1878.*

The Commu-
nal Administra-
tion of Brussels.

The undersigned certifies that, on the 17th of July, 1874, Mr. Pierre François Sallu, living at No. 42 Waterloo Road, declared that he had found, in the Quartier Leopold, the fragments of a certificate (or bond) for one thousand dollars.

Central Divis-
ion of Police.

Said fragments, not having been reclaimed, have become the property of the said Mr. Sallu, since the 17th of July, 1877.

No. —.

[Seal of Commis-
sary in Chief of
Police.]

The Commissary in Chief of Police:

LENARES.

Belgium Stamp.

The Burgomaster of the Commune of Saint Gilles, near Brussels, certifies that Mr. Pierre François Sallu, hair-dresser, living at No. 42 Waterloo Road, at Saint Gilles, this day appeared before him, and declared to him, as also appears in the declaration of the Commissary in Chief of Police of Brussels, that, on the 17th of July, 1874, in the Quartier Leopold at Brussels, he found the fragments of a certificate (or bond) for one thousand dollars; that said fragments, not having been reclaimed, have become the property of said Mr. Sallu, since the 17th of July, 1877; that said certificate (or bond) bears the number 13654.

Dimension 45
C Stamp.

In testimony whereof, the said Mr. Sallu signs these presents, with us, at Saint Gilles, the 22d of January, 1878.

For the Burgomaster:

H. WAFELAERTS, *Est.*

The claimant:

P. F. SALLU.

Examined and legalized as the signature of Mr. Wafelaerts, above described. Brabant Government Stamp.

BRUSSELS, *the 24th of January*, 1878.

The Governor of Brabant:

DUBOIS THOM.

Examined and legalized as the signature of Mr. Dubois Thom, elsewhere affixed. Seal of Minister of Foreign Affairs.

BRUSSELS, *the 25th of January*, 1878.

For the Minister of Foreign Affairs.

The Director:

P. LESPIRT.

CONSULATE OF THE UNITED STATES OF AMERICA,
Brussels, January 25, 1878.

I, John Wilson, United States consul at Brussels, do hereby certify that the seals and signatures of the within-named public officers are true and genuine. Consular Seal Notarial.

Given under my hand and seal, the day and year written.

JNO. WILSON,
U. S. Consul.

UNITED STATES OF AMERICA,
State, County, and City of New York. }

I, Thomas D. Cottman, of said city, do hereby certify that I am an attorney and counsellor-at-law, and a notary public of the State of New York, for the County of New York; that I am conversant with the French and English languages; and that the foregoing is a true and complete translation from the French into English of the annexed papers. Notarial Seal.

Witness my hand and seal, this 14th day of July, 1879.

THOMAS D. COTTMAN,
Notary Public, N. Y. Co.

Speyer & Co., on behalf of Mr. Sallu, also request the *return of the bond*, in case of refusal to issue a new one.

The papers were referred, July 16, 1880, to the First Comptroller in the Department of the Treasury for his decision.

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

The issue of a new bond in lieu of one wholly or in part destroyed, or so defaced as to impair its value, is expressly authorized by statute in favor of "the *owner* of such destroyed or defaced bond." (Rev. Stats., 3702, 3703.)

The first inquiry presented is, therefore, as to the *ownership* of this bond.

There are some characteristics of bonds which it may be proper to notice. "*Coupon bonds*" are payable to *bearer*; the title thereto passes, like coin or bank-notes, by delivery. If one be lost or stolen, and the finder or thief sells it to an innocent holder, the latter becomes the owner, even as against the original rightful owner. Possession, whether rightful or by fraud or larceny, is *prima facie* evidence of ownership, and all persons not chargeable with knowledge of the fraud or larceny may safely purchase from the holder. The Government may, in good faith, pay such bond to a party having its possession, and cannot again be required to make payment to any other.

When the holder of a coupon bond presents it at the Treasury for payment, or for the issue of a new bond, if it be mutilated or defaced, and, in good faith and honesty, as every claimant should, *states the character of his title*, the Government is bound to ascertain whether some other person be the rightful owner; and, if so, to protect such owner's rights. (*McLaughlin vs. Waite*, 5 Wend., 404; 1 Op., 90.)

Bonds *inscribed in the name of the owner*, commonly called "registered bonds," are different in many respects from "coupon bonds." The former are payable to the person whose name is inscribed therein, or to his assigns. They are registered in the office of the Register of the Treasury, and can only be assigned or transferred by the indorsement of the payee, or his authorized agent, or by operation of law, as in the event of his bankruptcy or death; and when transfers are made the original bonds are, or may be, taken up and cancelled in the Treasury Department, and new bonds issued in favor of the indorsee or owner. (12 Stats., 121.)

When a claimant presents a *registered* bond at the Treasury for *transfer* or *payment*, the Government is bound to ascertain the legality of his title thereto; that is, to verify the identity of the person claiming to be payee, and to pass on the genuineness of the assignment thereon, and the validity in law of transfers by operation of law, as in cases of intestacy, last will and testament, marital rights.

When the Government is chargeable with notice that the holder of a registered bond is, in respect thereof, a trustee, and of the character of the trust, it cannot properly permit a transfer in disregard or violation of such trust. (*Duncan vs. Jaudon*, 15 Wall., 165; *Lowry vs. Com. Bank*, Taney's Dec., 310; *Shaw vs. Spencer*, 100 Mass., 389; *Ashton vs. Atlantic Bank*, 3 Allen, 217; *Atkinson vs. Atkinson*, 8 Ib., 15; *Albert vs. Savings Bank*, 1 Md. Chanc. Dec., 408; *Penn. Life Ins. Co. vs. Austin*,

42 Pa. St., 257; Garrard *vs.* Pitts. & Connell, &c., Co., 29 *Ib.*, 154; Dodson *vs.* Simpson, 2 Rand., 294; Tillinghast *vs.* Champlin, 4 R. I., 173, 213; Field *vs.* Schieffelin, 7 Johns. Ch., 160; McLeod *vs.* Drummond, 14 Ves., 353.)

Payment to a claimant, without title, will not, as a general rule, relieve the Government from the duty of paying the rightful, legal owner; unless, indeed, by some act or omission of duty, on the nature of an *estoppel*, he has sanctioned or induced payment to another. (Lowry *vs.* Com. Bank, Taney's Dec., 310; Texas *vs.* Hardenberg, 10 Wall., 68; Duncan *vs.* Jaudon, 15 Wall., 165.)

In case a registered bond is lost or stolen, the finder or thief acquires no title; and if the Government pays the finder or thief, or even an innocent holder by a forged indorsement, the rightful, legal owner is still entitled to be paid.

Adherence to these principles is essential to the public credit. They are founded on reason, sanctioned by usage and law; they exist by the terms of the contract expressed in bonds, and the laws under which these are issued; their faithful observance by the Government has maintained its character for good faith unsullied, and thereby inured to its benefit by securing purchasers of bonds at low rates of interest.

The common law prevails generally in the United States, modified in some respects by acts of Congress, and in the States by local legislation.

On the continent of Europe the general principles of the civil law prevail, modified in some respects by legislation and usage. The law of the *domicile* of the owner of a coupon or registered bond may have an important bearing in determining transfers of title by *operation of law*, and sometimes in the case of transfers by contract or act of the parties, as well as on the evidence to support them.

But no law of *domicile* can change the contract which the Government has made in the bond under its own laws. For some purposes the law of the *domicile* enters into and becomes a part of the contract. Thus, it determines distribution of the personal estate in case of intestacy, the disposition by last will, and sometimes insolvent assignments and similar transfer by operation of law. (Bouv. Law Dic., "*Domicil*;" 2 Williams, Ex'rs, [1516,] [1517;] 1 Kent, Com., 75; 2 *Ib.*, 49, 63.)

At the common law, personal chattels are divided into two classes, denominated (1) *corporeal*, sometimes called *choses in possession*, or, as I prefer for brevity, "*tangibilities*;" and (2) *incorporeal*, sometimes called *choses in action* or *intangibilities*; and, not infrequently, *securities*,

such as Government bonds and stocks, public securities. (Schouler, Pers. Prop., 1-86, 94; Williams, Pers. Prop., 3 Am. ed., 6; 4 Pet., 410; see 12 Stats., 129, 178; 16 *Ib.*, 372; Rev. Stats., 251; 3 Wall., 3, 27; 7 *Ib.*, 23-31; 2 Bl. Com., 389; 2 Kent, Com., 351; Cooley on Taxation; Wilkinson on Public Funds, Lond., 1839; Royle, Law of Funds and Securities, Lond., 1875.)

In the civil law, these distinctions are recognized under the name of *corporeal* and *incorporeal movable property*. (3 Burge's Commentaries on Colonial and Foreign Laws and their Conflict, 465-543, London, 1838.)

With these general principles in view, and others relating to special aspects of the requests made on behalf of Mr. Sallu, and as affecting the title to the bond under consideration, the questions presented may be decided.

A new bond cannot (1) be issued on this application, nor, when presented, (2) be returned to the claimant; for reasons which will be stated.

I.—1. If it be assumed that the Commissary in Chief of Police of Brussels and the Burgomaster of the Commune of Saint Gilles had authority to adjudge the title of the bond in question to Mr. Sallu, there is no sufficient description of it in the proceedings to give effect to a judgment. There is no description even as of a bond of the United States; and in other respects it is imperfect.

The Secretary of the Treasury is authorized to prescribe "regulations" as to the proof required for the issue of new coupon bonds. (Rev. Stats, 161.)

Among the regulations prescribed are the following:

"Parties presenting claims on account of coupon * * * bonds of the United States which have been destroyed wholly or in part, * * * will be required to present evidence showing—

"1st. The number, denomination, date of authorizing act, and series of each bond. * * *

"2d. The time and place of purchase, of whom purchased, and the consideration paid.

"3d. The material facts and circumstances connected with the loss or destruction of the bonds.

"In all cases, the evidence should be as full and *clear as possible*, that there may be no doubt of the good faith of the claimant. Proofs may be made by affidavits duly authenticated, and by such other competent evidence as may be in the possession of the claimant."

These regulations are not complied with. It may be admitted that they are to some extent *directory*, and may be dispensed with by the authority that makes them; but the *reasonable elements of certainty* in all material facts are always essential. (1 Greenl. Ev., secs. 56-72.)

2. The evidence submitted in connection with the bond shows, and the application made by letter admits, that Mr. Sallu claims as *finder*. These facts—*notitia dicitur à noscendo*—charge the Government with notice that there was *another* person, the *owner*, whose rights are to be protected unless it shall be sufficiently shown that they have been (1) divested *and* (2) passed to Mr. Sallu. (Lowry *vs.* Com. Bank, Taney's Dec., 310; Shaw *vs.* Spencer, 100 Mass., 389; Duncan *vs.* Jaudon, 15 Wall., 165.)

Facts which would not be sufficient evidence to prove a given claim may, nevertheless, in law operate as *notice* to put the Government on an inquiry into the rights of parties. (3 How., 333; 1 McL., 110; 2 *Ib.*, 267, 412; 3 *Ib.*, 358; 7 Pet., 252; 1 Curt., 390; 3 Story, 82; 1 Pa. C. C., 525; Lowry *vs.* Com. Bank, Taney's Dec., 310; Texas *vs.* Hardenburg, 10 Wall., 68; Duncan *vs.* Jaudon, 15 *Ib.*, 165.)

It is the right of Mr. Sallu to *amend* or add to his proof; and for the disposition of other questions which would then arise, it may be assumed that he could, and, if material, would, prove by proper evidence all that his claim implies, including the foreign judgment, exemplified as the law requires. (1 Greenl. Ev., secs. 488, 514; Church *vs.* Hubbard, 2 Cranch, 228; Yeaton *vs.* Fry, 5 *Ib.*, 335; Buttrick *vs.* Allen, 8 Mass., 273; Packard *vs.* Hill, 7 Cow., 434; Henry *vs.* Adey, 3 East, 221; Buchanan *vs.* Rucker, 1 Camp., 63; Flint *vs.* Atkins, 3 *Ib.*, 215, *n.*; Cavan *vs.* Stewart, 1 Stark. R., 525; Black *vs.* Ld. Braybrook, 2 *Ib.*, 7; Appleton *vs.* Ld. Braybrook, 6 M. & S., 34; Gardere *vs.* Columbian Ins. Co., 7 Johns., 514; Thompson *vs.* Stewart, 3 Conn., 171; Rorer on Inter-State Law, 110–123; Rev. Stats. U. S., 905, 906.)

II.—The law under which the Chief of Police and the Burgomaster assumed to act does not apply to “intangibilities,” and hence no title *passed* to Mr. Sallu or is *evidenced* in him by the record produced.

1. The law by its terms applies to “movable” objects—to “things” of that character. The word “thing” is to be construed in connection with “movable objects,” according to the maxim, *Noscitur à sociis*; and hence means a tangible personal chattel, not an intangibility.

In the absence of any evidence as to the construction placed upon article 2279 of the Civil Code of Belgium by authoritative courts of that country, the words thereof, as translated on behalf of Mr. Sallu, must necessarily be construed according to their ordinary acceptation in this country; the translation having been made for the information of the officers of the Treasury Department.

2. If there has been a *construction* of this law of Belgium by an authoritative court of that country, it may be proved by producing the

decisions in books of recognized authority, or by the testimony of those learned in the law. (1 Greenl. Ev., sec. 488; *Church vs. Hubbard*, 2 Cr., 237; *Brush vs. Wilkins*, 4 Johns. Ch., 520; *Dalrymple vs. Dalrymple*, 2 Hagg., App'x, 15-144; *Mostyn vs. Fabrigas*, Cowp., 174; *Inge vs. Murphy*, 10 Ala. R., 885; Story, Conf. L., secs. 629, 642; *Rex vs. Picton*, 30 Howell, St. Trials, 515, 673; *In re Dormay*, 3 Hagg., Eccl. R., 767, 769; *Spence vs. Chodwick*, 11 Jur., 874; *Ingraham vs. Hart*, 11 Ohio St., 255; *Holt vs. State*, *Id.*, 690; *Baron de Bode's Case*, 8 Ad & El., 208. See Prof. Reinhold Schmid's treatise on "The Supremacy of Law in Relation to the Limitations of Territory and Time:" Jena, 1863.)

No evidence of construction by such court has, however, been produced.

III.—If it be assumed that the law of Belgium applies to *intangibilities*, still, the proceedings before the Commissary in Chief of Police and the Burgomaster cannot invest Mr. Sallu with title.

Assuming that the judicial proceedings, if they may be so termed, before these officials are offered either (1) as furnishing *evidence* of a possession for three years, thereby giving title under article 2279 of the Belgian Civil Code; or (2) as in the nature of a judgment *in rem*, vesting a title in Mr. Sallu, and consequently divesting the title of the former owner; they will be considered in both aspects.

1. Testimony may be perpetuated by decree in equity, or by special modes in pursuance of statute; then it becomes evidence for future use.

But on every principle of *justice* and of *law*, a party whose right is to be *divested* by a judicial instrument of evidence must have *notice*, *actual* or *constructive*, that such instrument is to be made; else it cannot operate against him.

Notice by publication has been deemed in many cases sufficient in judicial proceedings. (Cooley, Const. Lim., 4th ed., 506, [404;] *In re Empire City Bank*, 18 N. Y., 200; *Rockwell vs. Nearing*, 35 N. Y., 314; *Nations vs. Johnson*, 24 How., 195; *Beard vs. Beard*, 21 Ind., 321; *Mason vs. Messenger*, 17 Iowa, 261.)

Such notice cannot authorize a *personal* judgment; (Cooley, [404] *n.*;) nor operate on *persons* who are not citizens or residents of the country. (Story, Conf. L., secs. 29, 541-546; *Bischoff vs. Wethered*, 9 Wall., 812; *Schesby vs. Westenholz*, Law Rep., 6 Q. B., 153; Huberus, tom. 2, lib. 1, tit. 3, sec. 2, p. 538; Henry on Foreign Law, ch. 8, p. 54; ch. 9, p. 63; ch. 10, p. 71; 1 *Boyllenois*, Pr. Gén., 4, 5, p. 3; *Vattel*, B. 1, ch. 19, sec. 213; *Id.*, B. 2, ch. 8, secs. 99-103; *Caldwell vs. Van Vlissenger*, 16 Jur., 115; 9 Eng. L. and Eq., 51.)

2. A notice, sufficiently describing the property, may be given by *publication* even to an *unknown owner*; but every just code or system of laws must give an opportunity to be heard in court before evidence, which is to result in a change of title, can be given. These principles are settled by abundant authority.

It is a maxim of the common law, *Audi alteram partem*.

The ancient moralist and poet, Seneca, has given us a rule of the civil law sanctified with age:

"Quicumque aliquid statuerit, parte inaudita altera, Aequum licet statuerit, haud aequus fuerit"—

(Whosoever shall have determined anything without hearing the other side, may have decreed justly, yet he will not have been just.) (6 Rep., 52*a*; 11 Rep., 99*a*; 4 Exch., 97; 14 C. B., 165, E. C. L. R., vol. 78.)

Fortesque declared that "the laws of God and man both give the party an opportunity to make his defence, if he has any." (*In re Pollard*, L. R. 2 P. C., 106–120; *Broom*, Leg. Max., 114; *Doughty vs. Hope*, 3 Denio, 594; *In re Empire City Bank*, 18 N. Y., 199; *Nations vs. Johnson*, 24 How., 204; *Blackwell*, Tax Titles, 213; *Rorer*, Inter-State Law, 112, *notes*.)

The Constitution declares that—

"No person shall * * * be deprived of life, liberty, or property without *due process of law*." (*Art. V of Amendments*.)

In favor of the judgments and decrees of courts of *general jurisdiction*, process or notice may be presumed when the record is silent. (7 Cincinnati Am. Law Rec., 417; *Harvey vs. Tyler*, 2 Wall., 328; *Grignon vs. Astor*, 2 How., 319; *Kennedy vs. Georgia Bank*, 8 How., 586; *Pennington vs. Gilson*, 16 How., 65; *Kemp vs. Kennedy*, Pet. C. C., 30; *Gray vs. Larrimore*, 2 Abb. C. C., 542; *Lathrop vs. Stewart*, 5 McL., 167; *Crabb vs. Atwood*, 10 Ind., 331; *Spencer vs. Brockaway*, 1 Ohio, 259; *Sloo vs. Lea*, 18 Ohio, 307; *Morgan vs. Burnet*, *Id.*, 535; *Reynolds vs. Stansbury*, 20 Ohio, 344; *Robertson vs. Smith*, 18 Johns., 459; 17 Wend., 483; *Wheeler vs. Raymond*, 8 Cow., 314; *Bloom vs. Burdock*, 1 Hill, 130; *Settlemier vs. Sullivan*, 97 U. S., 444.)

Many authorities are collected by Cooley, showing when records have been held void for want of notice, when recitals of notice have been held conclusive, and when they may be disproved. (Const. Lim., 4th ed., 22–23, [17]*n*.)

But in tribunals of *special, statutory, or limited jurisdiction*, the process or notice, and every fact requisite to give authority to make a judgment, decree, or evidence, must appear of record. (*Comstock vs. Crawford*, 3 Wall, 396; *Sparks vs. Lee*, 1 Sawyer, 713; *Mathewson vs. Sprague*, 1

Cart., 457; 2 How., 319; Pet. C. C., 30; 2 Abb. C. C., 542; 20 Ohio 353.)

The legal character of the jurisdiction exercised by the Commissary in Chief of Police and by the Burgomaster is not shown. It is apparent that it must be in this case a special, statutory, limited jurisdiction; and hence the record, being silent as to notice, must be deemed as without validity.

If these principles are not recognized in Belgium, they will nevertheless be recognized by the Government of the United States.

The law that attempts in any country to make, without notice actual or constructive, evidence which is to divest a prior owner of title, will never be regarded here.

This Government cannot recognize or enforce a rule of law which disregards every principle of reason, justice, and morality, and which is against the policy of our systems of jurisprudence. (*Bradstreet vs. Neptune Ins. Co.*, 3 Sum., 607; *Snell vs. Faussatt*, 1 Wash. C. C., 271; *Hounditch vs. Donegal*, 8 Bligh, R., 301; *Buchanan vs. Rucker*, 9 East, 192; *Sawyer vs. Maine F. and M. Ins. Co.*, 12 Mass., 295; *The Mary*, 9 Cranch, 126, 144.)

It cannot recognize the doctrine, *castigatque auditque*. (Story, Conf. L., sec. 546; Ersk. Inst., B 1, tit. 2, secs. 17, 18; *Id.*, B 4, tit. 1, sec. 8; *Douglas vs. Forrest*, 4 Bing. R., 686, 690; *Bischoff vs. Wethered*, 9 Wall., 812; *Schesby vs. Westenholz*, Law Rep., 6 Q. B., 153.)

Whatever force and obligation the laws of one country have in another depend upon the laws and municipal regulations of the latter; that is to say, upon its own proper jurisprudence and polity, and upon its own express or tacit consent. (Huberus, lib. 1, t. 3, sec. 2.)

In *Erickson vs. Nesmith*, 15 Gray, 221, Judge Bigelow, in discussing the comity of nations, which gives effect to foreign judgments, said :

“The courts of a State, where the laws of a foreign State are sought to be enforced, will use sound discretion as to the extent and mode of exercising this comity. They will not suffer foreign laws or statutes to work injury or injustice upon their own citizens, nor permit their tribunals to be used for the purpose of affording remedies which are denied to parties in the jurisdiction of the State that enacted the law, and which tend to operate with hardship on their own citizens and subjects.” (Wharton, Conf. L., 310; 7 Cincinnati Am. Law Record, 675; *Swearingen vs. Morris*, 14 Ohio St., 429.)

In this case it is not shown either (1) that there was notice to the original owner of the bond, or (2) that the Commissary in Chief of Police or the Burgomaster constituted such a *court of general jurisdiction* as that notice must be presumed.

The proceeding does not show that the original owner or his resi-

dence was unknown to Mr. Sallu, so as to furnish *an excuse* for want of personal, or to raise an implication of constructive, service of notice. (People *vs.* Stanley, 6 Ind., 410.)

For *these reasons* the claim of Mr. Sallu must be rejected.

IV.—If the law of Belgium authorizes a judicial tribunal to make its decree evidence of title in the finder of a *coupon* bond, after three years' possession and proper notice to the loser of the bond, and if the finder submit the bond to the jurisdiction of such tribunal, and a decree in his favor be duly made, it would, *as between subjects of the Belgian government*, be respected by the executive officers of the United States.

1. This position is well supported by the authorities.

Wharton (Conf. L., sec. 369) says:

"It is * * * a question which lies at the root of international law, that a person who becomes domiciled in a State accepts its law as binding his person." (See also secs. 276, 337, 342, 347, 364, 369, 378, 382; Story, Conf. L., secs. 386, 390, 409, 477, 582.)

To the same effect see *Hughes vs. Cornelius*, 2 Shower, 232; *T. Raym.*, 473, and *Skin.*, 59; *Rose vs. Himely*, 4 Cranch, 241; *Hudson vs. Guestier*, *Id.*, 293; *Crousdon vs. Leonard*, *Id.*, 434; *Brent vs. Chapman*, 5 *Ib.*, 358; *The Mary*, 9 *Ib.*, 126–142; *Gelston vs. Hoyt*, 3 Wheat., 246; *Waters vs. Barton*, 1 Cold., (Tenn.), 43; *Newberry vs. Blakely*, 3 Hen. & Mun., 57; *Green vs. Van Buskirk*, 7 Wall., 139; *Shelby vs. Guy*, 11 Wheat., 361; *Smith vs. Smith*, 19 Grat., (Va.), 545; *Hunter vs. Potts*, 4 T. R., 182; *Phillips vs. Hunter*, 2 H. Bl., 402; *Lee on Bankruptcy*, 111; *Solomons vs. Ross*, 1 H. Bl., 131, *n.*; *Jollet vs. Deponthieu*, *Id.*, 132, *n.*; *Neale vs. Cottingham*, *Id.*, 133, *n.*; *Sill vs. Worswick*, *Id.*, 693; *Bradstreet vs. Neptune Ins. Co.*, 3 Sum., 600; *Schouler*, Pers. Prop., 353, 366, 367; *Chapman vs. Robertson*, 6 Paige, 630; 3 Burge, 752, 763, 764; *Oliver vs. Townes*, 14 Martin, La. Ann., 93; *Westlake*, Priv. Inter. L., secs. 267–269; 4 Phil., 396–417.)

Additional authorities will be presented when considering transfers by operation of law.

It might be urged with much force that a coupon bond is not *property per se*, but only evidence of a right to receive *in futuro* money, which may not now, but hereafter may, be in the Treasury of the United States, out of the jurisdiction of the Belgian courts, and on which Belgian law could have no extra-territorial operation. (Draft case, *ante*, 20; *Owen vs. Miller*, 10 Ohio St., 144; *Buchanan vs. Alexander*, 4 How., 20; *Ogden vs. Saunders*, 12 Wheat., 214; *Baldwin vs. Hale*, 1 Wall., 223; *State Tax Case*, 15 Wall., 326; *Id.*, 300; *Rorer*, Int.-St. L., 10, 167, 168; 13 Pet., 519; 13 Mass., 1; 6 Hill, 527; 8 Iowa, 304; 5 Otto, 714; 27 Ala., 391.)

But a *foreign* government must be permitted to govern its own citizens and determine their *title* to *coupon* bonds, when *possession* can be delivered in pursuance of judgments.

2. This principle does not contravene the contract of the Government to pay the *bearer* of such bond; when he comes with a title valid by the law of the country to whose laws he is amenable. It does not interfere with the *policy* or *interest* of our Government to the extent of requiring a disregard of the comity which recognizes the validity of foreign judgments.

But when the claimant, as in this case, gives notice that his title, however valid it may be according to Belgian law, rests solely on possession, his claim can be considered only when supported by *judicial evidence* of his right, founded on a judgment, decree, record, or other proceeding, to which the rightful owner had been made a party.

Such *evidence* could arise in a proceeding in Belgium (1) to establish it, or perpetuate testimony therefor, or (2) to determine, on application of the loser or former owner, the right of possession *as between subjects of that government*, wherein judgment or decree was rendered in favor of the holder.

(1.) It will be observed that Mr. Sallu is not asserting a title by possession under a statute of limitation, and asking to establish it by evidence without the aid of the proceedings before the Belgian officials named. Executive officers of this Government have no authority to decide such a question, because there is no provision for process or notice by publication to adverse claimants; and, as such notice is requisite on principles of morality and law, it is evident that Congress, in authorizing the issue of coupon bonds, and of duplicates in case of destruction, and, finally, payment, and in making no provision for adjudicating title by length of possession without original right, did not intend that executive officers should try any such question of title.

There is no statute of limitations in any American State giving title by possession merely. If there be one in a foreign State, (and most likely there is, in States where the civil-law principle of *Usucapio*, laid down in the Twelve Tables, prevails,) and no provision exist for furnishing judicial evidence of title as between citizens or subjects thereof, the adverse claimants, *if known*, could, when demanding payment, be remanded to the courts to pass on their claims. If such case shall arise, the jurisdiction of the Court of Claims and of other courts can be considered. (Rev. Stats., sec. 1063; *Darst vs. Brockaway*, 11 Ohio, 462; *Blakeney vs. Goode*, 30 Ohio St., 350; *Burr vs. Gregory*, 2 Paine, 429; *Brooks vs. Stolley*, 3 McL., 525; 2 Hill, 159; *Sherman vs. Champlain Tr. Co.*, 31 Vt., 162; 2 Shaw, 162; 5 Op., 670; 16 Op., 367; *Mezes vs. Greer*, 1 McAllister, 401; s. c., 24 How., 268; *Glenny vs. Langdon*, 98 U. S., 24; *Phelps vs. McDonald*, 99 U. S., 306; *Clark vs. Clark*, 17

How., 315; *Milngr vs. Metz*, 16 Pet., 221; *Trist vs. Child*, 21 Wall., 441; Safford's case, *post*, 262, in which this subject is more fully discussed.)

(2.) If the proceedings of the Commissary in Chief of Police and of the Burgomaster in relation to the bond in question were designed to have the effect of a judgment *in rem*, and even if they were admissible as to a *coupon* bond, they are, for the reasons already stated, fatally defective.

Such a question of title, as between citizens or subjects of a foreign State, would be somewhat different from that arising in a case affecting the right of one of our own citizens. If the contest were made by a foreigner against a citizen of the United States in a court in this country, it would be governed by the law of this country. (3 Burge, Comm. 878; Story, Conf. L., sec. 576; Wharton, Conf. L., secs. 381, 534, 535, *n.*; Huber, De Conf. Leg., sec. 7; Weber, *Natürliche Verbindlichkeit*, sec. 95; Fœlix, *Du Droit Int. Priv.*, 147-149.)

V.—In conceding to the Belgian tribunals the jurisdiction, as between Belgian subjects, to adjudge a transfer of the title in a *coupon* bond from a *loser* to a *finder*, some explanation is required, in order to avoid misconstruction.

1. No decree of a foreign court could, as a general rule, transfer title even in a *coupon* bond, unless, having jurisdiction of all parties in interest, it could *give possession thereof to the person in whom it vested title*.

a. The necessity of preserving to the United States the convenience, created by the policy of the law, of making coupon bonds payable to *bearer*, is imperative, and cannot be evaded; for this condition is a part of the contract printed on the face of the bonds themselves.

The Supreme Court of the United States, in the *Foreign-held Bond* case, 15 Wallace, 326, discussing railroad bonds payable to bearer, has said that no laws of a State "inconsistent with the terms of a contract, made with or payable to parties out of the State, have any effect upon the contract whilst it is in the hands of such parties or other non-residents."

As to Government bonds, the contract of the United States cannot be interfered with by the laws of any other country, no matter where the holders may reside; and payment of a coupon bond cannot be required by a judicial decree in favor of a party who does not thereby acquire a lawful possession.

b. Any other rule would subject the Government to the danger of double payments, and of leaving an outstanding bond which might pass to innocent holders.

2. It must be understood, also, that a *registered bond* cannot generally be transferred by the decree of a foreign court, unless, perhaps, by proceedings *in personam*, which secure an actual delivery and assignment on the bond in proper form, and possibly by decree securing the delivery of the bond and transfer of title.*

a. This is the result of (1) the terms of the statute authorizing the issue of bonds, (2) the contract as stated in the bonds, and (3) the "regulations" as to transfer which are made in pursuance of law.

(1.) The act of Congress of February 25, 1862, which practically commenced the creation of the existing bonded debt of the United States, declares that—

"The coupon or *registered bonds* * * * shall be in such form as the Secretary of the Treasury may direct." (12 Stats., 346.)

They are to—

"Be paid and redeemed by the United States, at the Treasury thereof." (11 Stats., 257; 12 Stats., 346, sec. 3.)

They are made, by act of Congress of December 23, 1857,

"Transferable by assignment *indorsed thereon by the person to whose order* they shall be made payable, accompanied together with the delivery of the notes [bonds] so assigned." (11 Stats., 258, sec. 5; 12 Stats., 346, sec. 3.)

It is declared that—

"The payment or redemption of said notes [bonds] * * * shall be made to the lawful holders thereof respectively."

These provisions have been, in effect, carried into subsequent acts.

(2.) The *form prescribed*, as authorized by law for registered bonds, is as follows:

*In England provision is made by statute on this subject in favor of judgment creditors of owners of consols. (1 and 2 Vic., c. 110, secs. 14, 15; 3 and 4 Vic., c. 82, sec. 1; *Hulkes vs. Day*, 10 Sim., 41; *Williams, Pers. Prop.*, 162; *Dundas vs. Dutens*, 1 Ves., jr., 198; *Simmonds vs. Lord Kinnaird*, 4 Ves., jr., 746; *Nantes vs. Corrock*, 9 Ves., jr., 188; *Bank of England vs. Lunn*, 15 Ves., jr., 577; *Guy vs. Pearkes*, 18 Ves., jr., 197; *Miles vs. Presland*, 4 Myl. & Cr., 431; *Walls vs. Jeffryes*, 3 Mac. & Gord., 372; see *Wilkinson on Public Funds*, 258, Lond., 1839; *Royle, Law of Funds and Securities*, Lond., 1875; *McCarthy vs. Goold*, 1 Ball. & B., 390; *Taylor vs. Jones*, 2 Atk., 617; *Horn vs. Horn*, Amb., 79; *Cockrane vs. Chambers*, M. & S., 1825; 7 Law Mag., 323; *Hulmes vs. Tennant*, 1 Bro. C. C., 16; *Birmingham vs. Sheridan*, 33 Beav., 660; *Hunt vs. Gunn*, 13 C. B., N. S., 226.) This subject is discussed in *Safford's case*, *post*, 262, which see. The courts of the United States exercise extensive powers in equity and at law by *capias ad satisfaciendum*, order of arrest, proceedings in aid of execution, and the like; but whether they, or the State courts, can transfer title in such bonds, is not now in question; and whether a statute prescribing the *mode* of transfer excludes all other modes—*quære?*

ACT OF MARCH 3D, 1865.

Consolidated Debt issued under Act of Congress approved Mch. 3d, 1865.

Series of 1867.

(1000.)

9997824.

Register's Office.

IT IS HEREBY CERTIFIED THAT

[Vignette.]

(1000.)

9997824.

C.

Treasury Dept.

THE UNITED STATES OF AMERICA

Are indebted unto WILLIAM FLETCHER

or assigns in the sum of ONE THOUSAND DOLLARS, redeemable at the pleasure of the United States after the 1st day of July, 1872, and payable on the 1st day of July, 1877, with interest from the 1st of January, 1879, inclusive, at 6 per cent. per annum, payable on the 1st day of January and July in each year. This debt is authorized by act of Congress, approved March 3rd, 1865, and is transferable on the books of this office.

WASHINGTON, ———, 18—.

Entered: A. B.

Recorded: C. D.

E—— F——,

Register of the Treasury.

[Redeemable after five, and payable twenty, years from July 1st, 1867.]

Transfer.

No.——.

ONE THOUSAND DOLLARS.

For value received, I assign unto ——— of ———, the within certificate of United States stock, issued by the Treasury Department, and hereby authorize the Register of the Treasury to transfer said stock on the books of the Department.

WM. FLETCHER.

Dated ———, 18—.

Executed in the presence of ——— ———, of the ——— of ———, in the State of ———.

NOTE.—The execution of the above assignment, when not made at this Department, must be witnessed by a United States Judge, District Attorney or clerk, or a Collector of the Customs, United States Treasurer, or Assistant, or American Minister abroad, United States Consul, or a Notary Public. If witnessed by either of the two latter, his official seal must be attached. In all cases the witness must add his official designation and residence. If assigned by a corporation, it must be described as the assignor. When it has not been previously done, evidence of the official character of the person signing must be furnished, as that he is president or cashier of a bank, and also proof of his authority to make the assignment. Executors, administrators, and trustees, when the stock stands in the name of the person they represent, must furnish legal evidence of their official character to be filed.

The Secretary of the Treasury is authorized to prescribe "regulations" for the "performance of" the business of the Treasury Department. (Rev. Stats., 161. See acts relating to loans.)

Regulations have the force of law. (U. S. vs. Barrows, 1 Abbott, U. S. R., 351.)

Provision is made by law for the registration and transfer of registered bonds.

(3.) The regulations prescribed by the Secretary of the Treasury include the following:

"The coupon bonds of the United States are payable to bearer, and they pass by delivery, without indorsement; except those authorized by the act of March 2, 1861—known as the *Oregon War Loan*—which, being payable to certain parties or their assigns, are transferable only by assignment; such assignment to be executed and acknowledged in like manner as in the case of registered bonds of other loans.

"REGISTERED BONDS.

"The registered bonds of the United States differ from the coupon bonds in the following respects, namely: (1) They have inscribed or expressed upon their face the names of the parties who own them, denominated *payees*; (2) they are payable ONLY to such payees or their assigns; and (3) the property or ownership in them can be transferred ONLY by assignment. For the purpose of assigning them, there are forms printed on the backs of the bonds, together with directions to be followed in the execution of such assignments.

"A ledger account is opened in the Department with each holder of one or more registered bonds; and in this account each bond is fully described. All recognized transfers must be made upon the loan-books in the Register's Office.

"TRANSMISSION OF BONDS.

"When registered bonds are properly assigned, they should be transmitted to the Register of the Treasury, and be accompanied by a letter of explicit instructions—stating the amount enclosed; the loan to which the bonds belong; the denominations of the bonds desired in exchange therefor; the name and residence of each assignee; and giving full particulars with regard to the payment of interest—in order that the new bonds may be issued in a proper manner, and the requisite entries be made on the books of this Department.

"When bonds of different loans are forwarded in one remittance, a separate letter of instructions should accompany the bonds of each loan.

"Letters of instructions sent with bonds of the funded five-per-cent. loan of 1881, the funded four-and-a-half-per-cent. loan of 1891, and the four-per-cent. consols of 1907, transmitted for transfer, should state the residence of the assignee and contain the address to which quarterly-interest checks should be mailed.

"NEW BONDS.

"Registered bonds received for transfer are cancelled, and new bonds in their stead are issued in the name of the assignee. These bear interest from the first day of the quarter or half-year (as their interest-term may run) in which the transfer shall have been made. As a rule, returns are made on the same day that the bonds are received, and made invariably by mail, unless otherwise instructed. When bonds are sent, or returned, by express or by registered mail, the entire expense thus incurred must be borne by the party desiring the transfer."

These provisions recognize (1) voluntary assignments made by the payees, (2) transfers by operation of law, and certainly none other, unless, possibly, (3) by decree, as stated. To permit a *foreign* court to make a *decree* for specific performance of the sale of a *registered* bond, and give it the effect of an indorsement by the party, or to permit a receiver for creditors of a judgment debtor to make an indorsement, at least without securing the actual production of the bond for surrender to the Government, would be attended with danger, inconvenience, uncertainty, and difficulty, if it would not be actually at variance with all these provisions.*

These acts of Congress relating to loans require transfers by contract to be in the written form specified.

They constitute, in some respects, a "statute of frauds and perjuries," excluding verbal contracts of sale.†

* It would make a new contract. (McLaughlen *vs.* Waite, 5 Wend., 404.)

The States in this country are under some national restraint as to the extent to which they can tax or otherwise interfere with Government bonds or persons owning them. (*Ex parte* Robinson, note to 3 Davis' Sup. to Indiana Statutes, 364; Electoral College case, 1 Hughes, 1 C. C., 571; *Ex parte* McCready, 1 Hughes, 598; *Ex parte* Budger, 2 Wood's C. C., 428; *In re* Buel, 4 Dillon, C. C., 323; Helm *vs.* Bank, 43 Ind., 167; Wilkinson on Public Funds, 258, London, 1839; Dundas *vs.* Dutens, 1 Ves., jr., 196; Guy *vs.* Pearkes, 18 Ves., jr., 197; McCarthy *vs.* Goold, 1 Ball & B., 367; Birmingham *vs.* Sheridan, 33 Beav., 660; Hunt *vs.* Gunn, 13 C. B., n. s., 226.)

In some States, provision is made for similar cases. (United States *vs.* Vaughan, 3 Binn. R., 394; James *vs.* M. Ins. Co., 10 Mass., 476.)

As to specific performance of contracts for transfer of bonds: Royle, Law of Funds, 54, London, 1875; Cuddee *vs.* Rutter, 5 Vin. Ab., 538; Doloret *vs.* Rothschild, 1 S. & S., 590; Stanton *vs.* Percival, 5 H. L. C., 257; Gardener *vs.* Pullen, 2 Vernon, 394; Lightfoot *vs.* Creed, 2 Moore, 255; 1 Story, Eq., 717-724; Scott *vs.* Billgerry, 40 Miss., 119; McLaughlen *vs.* Peatti, 27 Cal., 451; Yulee *vs.* Canova, 11 Flor., 9; Adderley *vs.* Dixon, 1 Sun. & Stu., 607; Buxton *vs.* Lister, 3 Atk., 384; Kekewich *vs.* Manning, 1 De G. M. & G., 176; Forest *vs.* Elwes, 4 Ves., 497; Arundell *vs.* Phipps, 10 Ib., 148; Rev. Stats., 1063, 1064; 1 Op., 90, Wirt, June 16, 1828; 5 Op., 670; Texas *vs.* Hardenberg, 7 Wall., 700; 10 Wall., 68; Van Antwerp *vs.* Hulbend, 7 Blatch., 426; Comegys *vs.* Vasser, 1 Pet., 210; Shepherd *vs.* Taylor, 5 Pet., 712; Freval *vs.* Bache, 14 Pet., 95; Gill *vs.* Oliver, 11 How., 529; Jaudon *vs.* Corcoran, 17 Ib., 612; Blakeney *vs.* Goode, 30 Ohio St., 350; Burr *vs.* Gregory, 2 Paine, 429; Brooks *vs.* Stolley, 3 McL., 525; 2 Hill, 159; Darst *vs.* Brockaway, 11 Ohio, 462; Sherman *vs.* Champlain Tr. Co., 31 Vt., 162; 2 Shaw, 162; Masinole *vs.* Union Paper Co., 6 Blatch., 356; Glennys *vs.* Langdon, 98 U. S., 24.

Where specific performance cannot be enforced no decree therefor will be made. (Scottish N. E. R. Co. *vs.* Stewart, 3 Macqu., H. Lds. Cas., 382.)

† The question has been discussed in England whether a contract for Government stock is within the Statute of Frauds. (Wilkinson on Public Funds, 116-154, London, 1839; Cuddee *vs.* Rutter, 1 P. Wms., 370; Nunns *vs.* Scipio, 2 Ib., 308; s. c., 1 Com., 356; Colt *vs.* Netterville, 2 P. Wms., 304; Pickering *vs.* Appleby, C. P., 7 Geo. I, 1 Com. Rep., 353; Prec. Chan., 533; Mussell *vs.* Cooke, Prec. Chan., 533; 5 Vin. Abr., 523, 538; Crull *vs.* Dodson, L. C., 11 Geo. I, 5 Vin. Abr., 578, sec. 1; Select Ca. Chanc., 42; Earl of Stafford *vs.* Buckley, 2 Ves., 171; Buckeridge *vs.* Ingram, Id., 652; House *vs.* Chapman, Id., 542; Knapp *vs.* Williams, 4 Ib., 430; Finch *vs.* Squire, 10 Ib., 41; Earl of Glengal *vs.* Barnard, 1 Keene, 770; Pawle *vs.* Gunn, 1 Arnold, R., 200, and MS.; Bradley *vs.* Holdsworth, 3 Mees. & W., 422; Rex *vs.* Hull Dock Co., 4 Tr. Rep., 219, 221; *Ex parte* Vauxhall Bridge Co., 1 Glyn. & J., 101; *Ex parte* Lancaster Canal Co., 1 Mont. & B., 94; Bligh & Brent, 2 Y. & C., 268; The King *vs.* Bates, 3 Price, 359; Sykes *vs.* Reeves, 6 Dowl., P. C., 384; 1 Ld. Raym., 440, 673, 686; 2 Ib., 350; Wilkinson *vs.* Meyer, 1 Strange, 585; 8 Mod., 173, 223; Maxwell *vs.* Sharp, 28 Geo. II, Sayer, 187; Ashley

Under the ordinary Statutes of Frauds, verbal contracts for the sale of land, where possession has been taken and full payment made by the purchaser, are enforced in the courts, in order to prevent the statutes from being made the instruments of fraud.

But this equity jurisdiction to convey title can have no application to the transfer of registered Government bonds.

b. Foreign courts cannot specifically enforce verbal transfers, or make transfers to satisfy creditors, at all events when the bonds are not produced, because the Government cannot be brought into court; and, on grounds of public policy, it cannot be required to look after and scrutinize the validity of judicial proceedings for this purpose in distant countries, or incur the delay which such proceedings would involve.

The acts of Congress relating to bonds and the payment of interest and principal have made it the duty of *executive officers* to pay the party entitled according to the terms of the contract; and a foreign court cannot interfere with this duty. (*Ante*, 14, 24, 74; Rev. Stats., 191, 236, 248, 305, 3689, 3691, 3694, 3698; Attorney-Gen. *vs.* Brown, 1 Wis., 522; State *vs.* Kennar, 7 Ohio St., 546; Davis *vs.* State, 7 Md., 161; Powell *vs.* Redfield, 4 Blatch. C. C., 45; Wis. *vs.* Duluth, 5 *Ib.*, 6; Antwerp *vs.* Hulburd, 7 *Ib.*, 432; Cooley, Const. Lim., 115; 2 Dillon, 406; 2 Abb., 35; 4 Nott & H., 6; 1 Cranch, 166; Rorer, Int. St. L., 2; Gels-ton *vs.* Hoyt, 3 Wheat., 246; U. S. *vs.* Palmer, *Id.*, 610; Taylor *vs.* Martin, 2 Curt., 154; Scott *vs.* Jones, 5 How., 343; Luther *vs.* Borden, 7 *Ib.*, 1; Clark *vs.* Braden, 16 *Ib.*, 635; Fellows *vs.* Blacksmith, 19 *Ib.*, 366; Garrad *vs.* Lee, 12 Pet., 511; Williams *vs.* Suffolk, 13 *Ib.*, 415; U. S. *vs.* Holliday, 3 Wall., 407; Miss. *vs.* Johnson, 4 *Ib.*, 475; Georgia *vs.* Stanton, 6 *Ib.*, 50; 12 *Ib.*, 700; Jones *vs.* Walker, 2 Paine, 688.)

As to mandamus: Kendall *vs.* U. S., 12 Pet., 524; Marbury *vs.* Madison, 1 Cranch, 127; McIntire *vs.* Wood, 7 *Ib.*, 504; McClung *vs.* Silliman, 6 Wheat., 598; Brashear *vs.* Mason, 6 How., 92; Reeside *vs.* Walker, 11 How., 272; U. S. *vs.* Guthrie, 17 How., 284; U. S. *vs.* Comm'rs, 5 Wall., 563; Gaines *vs.* Thompson, 7 Wall., 350; Litchfield *vs.* Register, 9 Wall., 576; Life Ins. Co. *vs.* Wilson, 8 Pet., 291; Life

vs. Kynaston, M. 11 Geo. I, there cited; 1 Salk., 112; s. c., Holt, 663; Duke of Rutland *vs.* Hodgson, 2 Str., 777; 1 Barnard, K. B., 95; 7 Geo. I, St. 2, sec. 8; 20 Vin. Abr., 3, 6; Barnard, Rep., B. R., 28, 29; Dickinson *vs.* Lilwal, 1 Stark. Rep., 128; Gomm *vs.* Affalo, 6 B. & Cres., 117; Heyman *vs.* Neale, 2 Camp., 337; Thornton *vs.* Kempster, 5 Taunt., 786; Powell *vs.* Devitt, 15 East, 29; 8 Cobb. Parl. Hist., 64; Lancashire *vs.* Killingworth, 1 Ld. Raym., 687; Thornton *vs.* Moulton, *coram* Pratt, C. J., 1 Str., 533; Greaves *vs.* Ashlin, 3 Camp., 427; Bullock *vs.* Noke, 1 Str., 579; Clark *vs.* Tyson, *Id.*, 504, 533; Heckscher *vs.* Gregory, 4 East, 607; Parker *vs.* Gordon, 7 East, 385; Garnet *vs.* Woodcock, 1 Str., 475; Dorriens *vs.* Hutchinson, 1 Smith, 420; *Id.*, 307, n.)

Ins. Co. vs. Adams, 9 Pet., 573; *Governor vs. Juan Madrazo*, 1 Pet., 110; *Kendall vs. Stokes*, 3 How., 87, 787; *Miller vs. Kerr*, 7 Wheat., 1; *Decatur vs. Paulding*, 14 Pet., 497; *Comm'rs vs. Whiteley*, 4 Wall., 522; *Cooper vs. Williams*, 4 Ohio, 285; 1 Op., Wirt, 681, 684; 3 Op., 531, 667, 718; 7 Op., Cushing, 80; 16 Op., 367; *Safford's case*, *post*, 262; *U. S. vs. McLemon*, 4 How., 286; *Hill vs. U. S.*, 9 How., 389; *Buchanan vs. Alexander*, 4 How., 20.

c. It may be said that a promissory note, payable to the payee, may be made the subject of a contract of sale, on which there may be a decree for specific performance, and that creditors of the holder may reach it by garnishee or trustee process or proceedings, and by creditors' bill.

This furnishes neither *analogy* nor *authority* for foreign judicial transfers of registered Government bonds.

In the case of promissory notes or other forms of indebtedness, courts can make all the persons in interest parties—the debtor and creditor or others. It can adjudge that debtors pay as justice or the rights of creditors may require. But the Government cannot be made a party to a proceeding in a court of any State of the Union, nor even in its own courts, except as provided by statute; much less can it be made a party in a foreign court, unless by treaty. (*Twycross vs. Dreyfuss*, Law Rep., 5 Q. B., Chan. Div., 605.)

No duty to pay or to transfer bonds by force of a decree of a foreign court can be imposed on the Government, and this is an essential requisite to make a judicial transfer effectual.

When natural persons and their right to the payment of money are subject to judicial decrees, it is because they are *subject to the laws* affecting debtors and creditors and contracting parties. But the laws of the United States and of the several States of the Union, applicable to natural or to ordinary corporate persons on this subject, do not apply to the Government; and much less can the laws of a foreign country. The law-books furnish maxims and many authorities on this point:

Nullum tempus occurrit regi.

Rex non potest peccare.

Quando jus domini regis et subditi concurrunt, jus regis præferri debet.

Roy n'est lié par aucun statute, si il ne soit expressément nommé.

“The King [the government] is not bound by any statute, if he be not expressly named therein, unless there be equivalent words, or unless the prerogative be included by necessary implication; for it is inferred *primâ facie*, that the law made by the Crown, [government,] with the

assent of the Lords and Commons, [government,] is made for subjects, and not for the Crown. (Broom, Leg. Max., 72.)

The Government is not within interest statutes. (*Ante*, 36, 85; 3 Op., 639; 9 Op., 59; 14 Op., 30; *Todd vs. U. S., Dev.*, 95; *U. S. vs. McKee*, 1 Otto, 450.)

Its officers cannot at common law be garnisheed, or subjected to judicial process of foreign governments, on behalf of judgment creditors, to reach money due from the Government to judgment debtors. (*Ante*, 15.)

Salaries of officers cannot be reached by judicial proceedings. (*Clark vs. School Com.*, 36 Ala., 621; *Spalding vs. New York*, 4 How. Pr. R., 21; *Mayor vs. Rowland*, 26 Ala., 498; *Hawthorn vs. City of St. Louis*, 11 Mo., 59; *Freeman on Executions*, secs. 132, 133; *May vs. Hoaglan*, 9 Bush, Ky., 191; *Buchanan vs. Alexander*, 4 How., 20.)

Patent-rights are not subject to such State interference as would impair their validity or value. (*Ex parte Robinson*, note to 3 Davis, Sup. to Ind. St., ch. 242; *Helm vs. First Nat. Bank*, 43 Ind., 170; s. c., 13 Am. R., 395; *State vs. Brown*, 30 Ohio St., 103; *Blakeney vs. Goode, Id.*, 350; *Mersevole vs. Union Paper Col. Co.*, 6 Blatchf. C. C., 356.)

d. Registered bonds of the United States cannot be transferred in a foreign country except by conforming to the law of this country which regulates transfers.

Thus, in 3 Burge's Commentaries on Colonial and Foreign Laws, etc., London, 1838, it is said:

"Property in the public funds or stocks, shares in companies, joint stocks, &c., is a species of personal property which, as it is created, so it is regulated by the law of the country in which it exists. Certain forms are prescribed by which alone the holder of any share or interest can transfer it. Here the transfer is so far subject to the law of the place where the property is situated that the legal title to it is not acquired unless those forms are observed." (763, 764; *Moreton vs. Milne*, 6 Binn., 361; 7 Cincinnati Am. Law Rec., 675; Draft case, *ante*, 11; *Owen vs. Miller*, 10 Ohio St., 141; *Swearingen vs. Morris*, 14 *Ib.*, 429; *Story, Conf. L.*, secs. 364, 386, 390; *Green vs. Van Buskirk*, 7 Wall., 139; *Schouler, Pers. Prop.*, 353-355; *Wharton, Conf. L.*, secs. 337-342; *Dow vs. Gould*, 31 Cal., 630; *Oliver vs. Townes*, 14 Martin, La. Ann., 93; *Westlake, Priv. Int. Law*, secs. 267-269; 4 Phillimore, 396-417.)

Wharton, in his Conflict of Laws, section 305, says:

"Notice the fraud and depreciation which would follow, if parties domiciled abroad could transfer, without the registry required by our local statutes, stock in our insurance or railroad companies; the result

being that no one, buying on a paper title, would know by what superior liens or claims such paper title might be overridden."

In *Lemmon vs. People*, (20 N. Y., 562,) it is said that—

"Any rule of law based upon the principles of comity between States, must yield to the positive legislation of the State in which the conflict between the two arises."

These principles rest on the policy and interest of this Government, in pursuance of which it is essential so to construe its laws, consistently with international *comity*, as to give to its own bonds the greatest practicable value in foreign markets. If bonds are exempt from litigation in foreign courts, their value is thereby enhanced, and stronger inducements are held out to make investments therein.

3. It is important to notice, also, that the power of the Belgian government is recognized, for the purpose stated, by reason of principles of international law, to which reference has been made. That government may tax its subjects who hold bonds, and make laws otherwise affecting *its own citizens* in relation thereto, so far as the laws can be enforced in *its own courts* or *by its own officers*. It is not subject to the limitations *within its jurisdiction* which are imposed by the Constitution of the United States on the individual States of this Union. Some of these limitations have been already adverted to. (*Banks vs. Mayor*, 7 Wall., 25.)

4. As to coupon and registered bonds, there may be, *by operation of law*, transfers of title (1) in foreign countries, and (2) in the American States.

In an article in the 7th Cincinnati American Law Record, 685, (May, 1879,) it is said, as to certain forms of property:

Transfers of title by operation of law and otherwise under the authority of law may arise by (1) forfeiture, (2) succession, (3) marriage, (4) judgment, including attachment, garnishee process, creditor's bill in equity, &c., (5) insolvency, assignments under bankrupt and insolvent laws, (6) intestacy, (2 Kent, 385;) to which may be added, (7) seizure and sale for taxes.

There is, perhaps, a difference between foreign governments and the States of our Union, as to the right to transfer title in some of the modes indicated.

Government bonds may be transferred by operation of law in foreign countries and in our States by (1) devise, (2) distribution in case of intestacy through, or sale by, an administrator, (3) succession or inheritance, if the law shall so provide, in favor of heirs or others, to the exclusion of creditors, &c. (Draft case, *ante*, 23; Safford's case, *post*, 262; *U. S. vs. Gillis*, 95 U. S., 416.)

The *lex domicilii* of the owner governs the transfer in such cases. This demands some consideration.

(1.) The *reason* upon which this transfer by operation of law is recognized is *not* a want of power in the National Government to direct the disposition in such cases of the property which it has created.

The Constitution has given it power "to borrow money on the credit of the United States" and "to pay the debts and provide for the common defence and general welfare of the United States," and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." (Art. 1, sec. 8.)

The power to borrow money has been considered in numerous cases. (*McCulloch vs. The State of Maryland*, 4 Wh., 316; *Weston et al. vs. The City Council of Charlestown*, 2 Pet., 449; *Bank of Commerce vs. New York City*, 2 Black, 620; *Bank-Tax Cases*, 2 Wall., 200; *The Banks vs. The Mayor*, 7 *Ib.*, 16; *Bank vs. Supervisors*, *Id.*, 26; *Hepburn vs. Griswold*, 8 *Ib.*, 603; *National Bank vs. Commonwealth*, 9 *Ib.*, 353; *Parker vs. Davis*, 12 *Ib.*, 457.)

So has the power to make necessary law. (*McCulloch vs. The State of Maryland*, 4 Wh., 316; *Wayman vs. Southard*, 10 Wh., 1; *Bank of United States vs. Halstead*, *Id.*, 51; *Hepburn vs. Griswold*, 8 Wall., 603; *National Bank vs. Commonwealth*, 9 *Ib.*, 353; *Thomson vs. Pacific Railroad*, *Id.*, 579; *Parker vs. Davis*, 12 *Ib.*, 457; *Railroad Company vs. Johnson*, 15 *Ib.*, 195; *Railroad Company vs. Peniston*, 18 *Ib.*, 5.)

(2.) But Congress, having authorized the issue of bonds without making any provision *on these subjects*, has, by necessary implication, if not by the Revised Statutes, section 721, sent them forth subject to the law of the domicile of the owner, as it is or may be regarding transfers by operation of law in the cases stated. Hence, the State courts may, in *such* cases, decide disputed questions of descent. (5 Op., 670.)

Congress may elect to waive some of its rights. (*Bank vs. Supervisors*, 7 Wall., 30; *Wright vs. Stiltz*, 27 Ind., 338; *Potter's Dwarris on Stats.*, 353 n; *Gardner vs. Collins*, 2 Pet., 58; *Henderson vs. Griffin*, 5 Pet., 151.)

Congress may permit the States to exercise *some concurrent* powers until a national law otherwise determines. (*The Moses Taylor*, 4 Wall., 411; *Ex parte McNiel*, 13 Wall., 236; *Bank of Bethel vs. Pahquioque Bank*, 14 Wall., 383; *Federalist*, No. 32; *Clafin vs. Houseman*, 93 U. S., 130; *Higby vs. National Bank*, 26 Ohio St., 79; *Blakeney vs. Goode*, 30 *Ib.*, 350; *Hade vs. McVay*, 31 *Ib.*, 237; *Farmers' and Mechanics' National Bank vs. Dearing*, 91 U. S., 34.)

Under the Constitution of the United States, there are *implied limitations* on the power of the States, as where the exercise of a power by a State would interfere with the "means and instruments employed in the exercise of the functions of the National Government." (*Ante*, 18; Federalist, No. 32; *Weston vs. Charleston*, 2 Pet., 467; 2 Black, 628; 2 Wall., 200; *Banks vs. Mayor*, 7 Wall., 25; *Bank vs. Supervisors*, *Id.*, 31.)

The right of the States to regulate transfers of Government bonds by operation of law in the cases enumerated is not in terms prohibited (1) by the Constitution of the United States; nor (2) by act of Congress. This right, when exercised in a reasonable manner, does not impair the value of the bonds or interfere with any interest of the United States, but rather advances them, by giving to citizens resident in the States the benefit of the local laws. The laws of the States in relation to these transfers are therefore operative.

Foreign governments are under no limitations of power by force of our Constitution; and, when Congress has not deemed it advisable to regulate transfers by operation of law, so as thereby to determine the rights of parties asking payment, foreign laws on this subject are to be respected, if they conflict with no law or policy of this Government. This is in consonance with the general rule of international comity and inter-State law, as to transfers by operation of law in the cases mentioned.

Gholson, J., in *Owen vs. Miller*, 10 Ohio St., 141, referring to some rules applicable to our States, said:

"*In case of intestacy*, the law of the place where the owner of personal property had his domicile governs its *distribution* wherever it may be situate, and, in case of a transfer by contract of personal property valid by the law of the place where it is made, effect will be given to it in the place where the property in fact exists, unless some policy of the local law be infringed. But this principle properly applies only where the claim of the owner ceases, as in the case of intestacy, by death, or where, by his voluntary agreement, he has parted with his claim. It has no proper application where an attempt is made to take the property from him against his consent." [That is, by the law of a State where the owner does not reside.] (*Swearingen vs. Morris*, 14 Ohio St., 424; *Rorer on Inter-State Law*, 195, &c.; *C., P. & A. R. Co. vs. Penn.*, 15 Wall., 300.)

As to transfers by bankruptcy, see Wharton, *Conf. L.*, secs. 347–365, 386–391; *Lathrop vs. Drake*, 91 U. S., 516; *Glenny vs. Langdon*, 98 U. S., 24; *Parsons vs. U. S.*, 8 Ct. Cls., 543.

VI.—The claim of Mr. Sallu must be denied, because this coupon bond is not, for the purpose of transfer of title, by (1) *judicial decree* or

(2) *operation of law*, subject to the Belgian law, as against any *other* than Belgian subjects.

Mr. Sallu claims as *finder*. There was a former owner, else the bond would not be outstanding. It is not *shown* whether such former owner was a subject of Belgium, or of some other State. It cannot be presumed, under a special statutory proceeding, that he was a subject of Belgium. The bond may have been owned by a citizen of the United States or of some other country. As a matter of history, bonds of this class were largely owned by the people of foreign countries; and it is not improbable that the bond now in question was owned by some one, not a subject of Belgium, travelling through that country. If the finding or construction of a foreign tribunal on this or any other subject should not conflict with the policy, interest, or contracts of our Government, it would be proper to accept it. (*Rose vs. Himely*, 4 Cr., 241; *Grignon vs. Astor*, 2 How., 319; *Bradstreet vs. Nept. Ins. Co.*, 3 Sum., 600; 1 Pet., 329; 2 *Ib.*, 157; 13 *Ib.*, 499; 3 How., 750; 8 *Ib.*, 495; 9 *Ib.*, 336; 2 McL., 473, 511.) Where, as in this case, there is such conflict, the law of Belgium cannot apply. The authorities, as already shown, say that intangibilities are generally subject only to the *lex domicilii* of the owner. (Story, Conf. L., secs. 29, 541–546; *Bischoff vs. Wethered*, 9 Wall., 812; 7 Cin. Am. L. Rec., 675; *Owen vs. Miller*, 10 Ohio St., 141; *Swearingen vs. Morris*, 14 *Ib.*, 429.)

Tangibilities, when brought by a foreigner within a State to remain for sale, improvement, or profit, become subject to the laws thereof. (*Powell vs. City of Madison*, 21 Ind., 335; *Hinson vs. Lott*, 8 Wall., 148.) But tangibilities in transit, or following the owner's person, are not subject to the *lex fori*. (Wharton, Conf. L., secs. 299, 303, 354, 382; Savigny, Röm. Recht. VIII, 366; Bar, secs. 64, 202; Masse, 102, 103; *St. Louis vs. Ferry Co.*, 11 Wall., 423; *Hays vs. Pacific Mail*, 17 How., 596; Cooley on Taxation, 270, *n.*; *Parker vs. Comm'rs*, 23 N. Y., 242.) Sir R. Phillimore, in his International Law, sec. 404, says:

“Debts and rights and causes of action are universally treated by jurists as attached to the person of the debtor, and governed by the law of his domicil.”

Story, in his Conflict of Laws, affirms the same principle. (Secs. 362, 364, 381, 395, 397; Wharton, Conf. L., 359; *Powell vs. City of Madison*, 21 Ind., 335; *Sill vs. Worswick*, 1 H. Bl., 690; *Doe vs. Vardell*, 5 Barn. & Cresw., 438–452; 9 Bligh, 32, 88; 2 Clarke & Fur., 571; *Worthington vs. Sebastian*, 25 Ohio St., 1; *Foreign-held Bond case*, 15 Wall.,

300-326; 6 Pet., 389-400; Page *vs.* McKee, 3 Bush., Ky., 135; Law Rep., H. L. Cas., 1870, p. 428.)

In view of what has been said, it is clear that there was, in the present case, no judicial or legal proceeding which could have invested Mr. Sallu with title.

VII.—On general principles, by the common and civil law, and without the aid of a statute, the finder of a Government bond acquires no title therein.

1. The finder of a *personal tangibility* acquires in it not a *general* but a *qualified property*, simply a right to the possession thereof, as against all the world *except the rightful owner*. (McLaughlin *vs.* Waite, 5 Wend., 404; 1 Bl. Com., 295; 2 *Ib.*, 9; Doctor and Student, 2 Dial., c. 38; 2 Bulst., 306-312; 1 Rolle, 125; Bouv. Dic., "Finder," "Trover.") Such also is the rule of the civil law as to all movables found, and the same principle is incorporated into the civil codes of France and Louisiana. (5 Wend., 406; Domat. B, 3, tit. 7, sec. 2, arts. 9, 10; Code Napoléon, art. 2279; Civil Code of Louisiana, arts. 3383-3385; Armory *vs.* Delamire, 1 Strange, 505.) This possession might, as to tangibilities, at common law ripen into a general, absolute property by the statute of limitations, which, however, probably in most States, never did apply to the possession of intangibilities.

2. But the finder of an *intangibility* acquires no title therein, as against the owner, or the party or Government liable thereon. Of course, if the finder of a bond, payable to bearer, conceals the mode by which he acquired title, he can, by sale, pass a good title to an innocent purchaser. But there are sufficient *reasons* why the finder of a bond like this acquires no property in it, either as against (1) the owner or (2) the Government-debtor.

a. A sufficient reason is, that' the paper evidence of debt is not *property*. The property, *per se*, is the interest and principal to be paid. It is not *res in esse*, but *in futuro*. (*Ante*, 21.)

b. The bond is evidence of a right to the payment of a debt. This right cannot be lost or found; it survives the destruction of the bond. If a written contract be made for the delivery of goods, and the holder lose it, the finder does not become the owner, either of the contract or the goods.

c. In McLaughlin *vs.* Waite, 5 Wend., 404, it was said:

"It is well settled, that the finder of a promissory note or a chose in

action does not acquire such a right as will enable him to maintain an action for the money. The finder is entitled to hold the thing found until the owner appears; but if it is a note or chose in action, it is but evidence of a right, and of no value unless enforced." (*Peacock vs. Rhodes*, Doug., 611; *Miller vs. Race*, 1 Bur., 452; *Solomons vs. Bank of England*, 13 East, 135; *Pierson vs. Hutchinson*, 2 Camp., 214, n.)

"It is true, the finder, by transferring a note or bill of exchange to a *bonâ fide* purchaser, can confer a good title, and he who steals a note or bill can do the same; but this must be before the note or bill is due, because, if due, the purchaser takes it on the credit of the person who sells, and is chargeable with notice of every fact that may be urged against it.

"These principles are familiar, and they appear to me to be conclusive against the plaintiff in this cause. He found the certificate in relation to the [lottery] ticket, and he gave notice to the defendants that he had found it. Having given them notice of the finding, they could not safely pay him the money without subjecting themselves to an action from the owner if he had appeared. And whether he appeared to claim the money or not cannot alter the rights of the parties. If the plaintiff is now entitled to recover, he was equally entitled the moment the money was due. It is one of those cases where neither party is entitled in right to the money, because it belongs to the owner of the ticket; but the law leaves the parties to enjoy the rights which they respectively possess. The plaintiff has a right to the certificate which he found; and the defendants, being in possession of the prize-money, must hold it till the owner appears; and, if he never appears, it is their good fortune, as it would have been the plaintiff's had he found the money instead of the certificate.

"Suppose a foreigner should come into this State, one who had no heirs or representatives within it, and should bring with him a check on one of our banks payable to him or bearer, and should lose it or die and leave the check in his pocket, can it be contended that the finder of the check, or he who should possess himself of it, could maintain an action against the bank for non-payment, where notice was given to the bank that the person presenting it had found it? I think it cannot be maintained that an action would lie; and yet the bank would be in possession of the fund upon which the check was drawn, and would continue in possession until it was drawn out by the person who had placed it there, or upon his authority; and if he never drew for it, the bank would enjoy the fund as its own, without any right except that of possession. The law never divests one person of his possession of chattels or money for the sake of giving it to another, unless the other shows a paramount right. These principles are familiar, and are fairly deducible from the cases which have a bearing on the subject, and, I think, are conclusive against the plaintiff."

(See 2 Camp., 214, n.; *Texas vs. Hardenberg*, 10 Wall., 68; 2 Daniel, Neg. Inst., sec. 1505; *Arents vs. Commonwealth*, 18 Grat., 773; 5 Am. Law Reg., N. S., 555; Story on Sales, sec. 201.)

The Court, *per* Chancellor Walworth, further said:

"All property in a thing in action must depend on contract, either express or implied. It is not property, but an evidence of a right to

property. If we apply to it the before-mentioned principle of presumption, that the former owner voluntarily abandoned his right, the person against whom the legal claim existed is entitled to the benefit of such relinquishment. If property is abandoned, it is in a state of nature, and the first possessor is entitled to it; but if a right of action or a contract for the delivery of property is voluntarily relinquished by the person entitled to the same, his right is gone; and no other person, without the consent of the original contracting parties, can recover on that contract.

“For the purposes of commerce, the possession of certain negotiable securities, in the hands of *bonâ fide* holders, is conclusive evidence of right. But in those cases it is conclusive against the loser as well as against the debtor, although the former shows that he never intended to abandon his right. The claim of the *bonâ fide* holder in those cases depends upon the principle of equity, that where one of two innocent persons must suffer by the wrongful act of a third, he who by his *negligence* has enabled him to do the injury must sustain the loss. In such cases possession is *primâ facie* evidence of right, and a *bonâ fide* purchaser from the possessor, under a supposition that he is the legal owner, will entitle the vendee to recover even against the loser. These circumstances in law operate as a legal assignment of the property. * * *

“The defendants were the owners of the original [lottery] ticket, and, therefore, were the proper persons to receive the prize from the managers; they, of course, must have given security to pay the money to the legal owner of the share whenever it was called for. *By their agreement they did not contract to pay it to any other than the legal holder and owner of their certificate.* Neither of the parties have any equitable right to retain the money, and if all the facts had been known to the managers with whom the original ticket was deposited, probably it would not have been paid over to either, but would have been retained until the person equitably entitled to this part of the prize appeared.

“Where money or other property is in the possession of one party and another seeks to recover it, where neither has the right, if such possession has not been wrongfully obtained, courts of justice will not interfere. The plaintiff must recover on the strength of his own title, and if he has no legal right to the property, the court will not enquire as to the rights of the defendant. No recovery can be had in this case without making a new contract for the parties to which the defendants never assented; nor without adopting a principle which might be dangerous in its operation.”

The reasoning of the Court of Errors in the above case is conclusive. If the owner of a Government bond abandon it, or cast it away, the finder would acquire no property whatever. (2 Kent, Com., 356; 1 Bl. Com., 296; Coke, 3 Inst., 107; *Rex vs. Macklew*, 1 Ryan & Moody, 160; 2 East, P. C., 663; *People vs. Anderson*, 14 Johns. R., 294; *McGoon vs. Aukeny*, 11 Ill., 558; 7 Eng. L. and Eq., 424.)

VIII.—The bond cannot be surrendered by the Government to Mr. Sallu. The reasons for this are sufficient:

1. The Government has notice that Mr. Sallu has no title to the bond.

To surrender it now would put it in a position where, without imputing to him any purpose to pass it to an innocent purchaser, it might, in various ways, pass to such purchaser; in which event, the Government would be bound to redeem it for him. (*Duncan vs. Jaudon*, 15 Wall., 165.)

2. If the rightful owner should appear and claim payment, the Government would be bound also to pay him, upon the well settled principle that where one of two innocent persons must suffer by the wrongful act of a third, he, who by his *negligence* has enabled him to do the injury must sustain the loss. (5 Wend., 404; 1 Op., 90.)

From what has already been said, in discussing the rights acquired by the finder of an intangibility, it is evident that the claimant in this case is not entitled to payment, or to a return of the certificate of indebtedness found by him.

The bond cannot be surrendered, because, for the reason stated, Mr. Sallu has no right to its custody.

TREASURY DEPARTMENT,

First Comptroller's Office, November 25, 1880.

IN THE MATTER OF THE ASSIGNMENT OF REGISTERED GOVERNMENT BONDS.—KLINK'S CASE.

1. The owner of Government registered bonds inscribed in a fictitious name may, by such name, assign them to a *bond fide* purchaser.
2. The Government, as a matter of strict right, is under no obligation to pay the holder of bonds by him fraudulently caused to be registered (inscribed) in a *fictitious* name.
3. Bonds inscribed in a given name are presumed to be owned by some person of that name; and purchasers under a person who has, in a fictitious name, assumed to be the owner must, to secure payment or a transfer of registry, (1) make clear proof of his ownership and of the good faith of the transaction; (2) engage by bond to indemnify the United States against loss or expense, and to pay any lawful claimant; and (3) furnish such other evidence and do such acts as may, under the circumstances, be practicable and reasonable.
4. If bonds be inscribed in the name of one person, but purchased with the money of another, a *trust* as between them may be presumed, unless the presumption be rebutted by relationship or other fact. In such cases, questions may arise as to the power of courts of equity to give relief.
5. The Government is not bound, even on notice of *latent* equities in bonds, to protect them, but may deal with the party holding, in regular form, the legal title.
6. There *may* be cases in which bonds may so far disclose the character of a trust as to make it the duty of the Government not to permit transfers in violation of it.

7. The mere possession of registered bonds is not evidence of title sufficient to justify a purchaser in taking an assignment from the holder.
8. It is the duty of the Government to protect, as far as possible and consistent with public interests, the rights and just demands of innocent purchasers of bonds for valuable consideration.
9. Purchasers of bonds are bound to exercise reasonable care to identify parties selling as owners; and when unexpected difficulties arise, the holders will be required to produce such evidence, and do such acts, as may be reasonably necessary and just to save the Government from loss.

The following facts appear by evidence :

Louis Klink, of St. Charles, Kane county, Illinois, about the 22d April, 1879, purchased with his own money, of the National Bank of Chicago, United States registered bonds Nos. 66520 and 79902 for \$100 each; Nos. 32704 and 34184 for \$500 each; and 57919 and 62030 for \$1,000 each, act July 14, 1870, four per cent. consols of 1907. No. 79902 is inscribed in the name of Jakob *Maier*; all the others in the name of Jacob *Meier*, under dates of April 25 and 28, May 13, and July 16, 1879.

At the time these bonds were so inscribed, there was a resident of Aurora, Kane county, Illinois, named John Jacob Maier, otherwise known as Jacob *Maier* or *Meier*. When Klink caused the bonds to be registered in his name, he described the residence of the payee as at Aurora, Illinois, to which place he directed checks in payment of interest thereon to be sent by mail. Checks were so sent by mail and were called for and received by the wife of Klink; but none has been paid, because, being payable to Maier or Meier, no person has been identified as the rightful holder.

At the May term, *May* 7, 1879, of the (State) circuit court of Kane county, Francis H. Bowman recovered judgment against Klink for \$310; and other judgments for larger amounts were at the same time rendered in said court against Klink in favor of David Kelly and others.

On *January* 7, 1880, these creditors united in filing a creditor's bill in said court against Klink and John Jacob Maier, setting out the judgments as in force, with no property subject to execution; that in and prior to May, 1879, Klink, to defraud creditors, converted large amounts of personal property into money and invested it in Government bonds of the United States, which bonds he caused to be registered in the name of said Maier, without his knowledge or procurement, and describing the bonds as above; that Klink has the custody of the bonds; that on August 14, 1879, Klink was arrested on a *capias ad satisfaciendum* on said judgments, and remained in custody in jail in said county until December 21, 1879, when he made his escape. The bill prays an

injunction to restrain Klink from assigning the bonds; that a receiver be appointed to take charge of them, with the usual powers of receivers; and for proper relief. The affidavits filed tend to show the allegations of the bill to be substantially true.

John Jacob Maier filed, February 2, 1880, an answer, alleging that he never saw Klink but once, never spoke to him, has no knowledge of the matters, and never authorized him to register any Government bonds in his name.

On *January* 24, 1880, at Chatham, in the province of Ontario, Dominion of Canada, Klink, in due form, assuming the name of *Maier* as to bond 79902, and *Meier* as to the others, assigned them—part to John H. Jenks, and the residue to Drexel, Morgan & Co., of New York.

The bill has been continued in court; but neither Klink nor Jenks has been, or, by reason of absence, can be, served with process.

Under date of March 3, 1880, the First Comptroller, Hon. A. G. Porter, wrote to Jenks, saying:

“Jakob Maier has caused to be filed in this office an affidavit made by himself, in which he states that Klink was the person who purchased the bonds, and that they were bought by him in the deponent's name, and that he is the only person of that name at the place mentioned.

“The danger of allowing these bonds to be assigned by Klink in the name of Jakob Maier, is obvious.”

Under date of May 17, the Comptroller wrote to Jenks:

“The presumption is, in the absence of clear evidence to the contrary, (he, Klink, having purchased the bonds in another name than his own,) that the purchase was made on behalf of a person of that name.

“If, therefore, some person of that name were to turn up as a claimant, the inference would be that the indorsement made by Klink in the name of Jakob *Maier*, or *Meier*, without a power of attorney, was unauthorized, and the title of *Maier* or *Meier* to the bonds would remain unaffected.”

Under date of June 4, the Comptroller wrote to Jenks:

“Klink, in his affidavit, asserts that, at the time he purchased the bonds, he was a citizen of St. Charles, Kane county, Ill. He caused the interest-checks, however, to be directed to Jakob Maier and Meier, Aurora, Ill., and his wife, calling herself Kitty Maier, or Meier, called at the post office there, for letters supposed to contain the checks addressed to Jakob Maier.

“The affidavit of a person not named *Jakob* Maier, but John Jakob Maier, on file, shows that he has no interest in the bonds.

“Upon consideration, it is believed that the following further requirements ought to be made:

“1. That the affidavits of two prominent and well-known persons of

St. Charles and Aurora, Illinois, respectively, the mayor and town-marshal being suggested, if there are such officials, shall be furnished, showing that there is no person of the name of Jakob or Jacob Maier or Meier in said towns respectively, and that they are not acquainted with any person of that name in Kane county; or if the affidavits show that they are acquainted with a person of such name, that the affidavit of such person shall be produced, stating that he has no title to, or interest whatever in, the bonds, or any of them, identifying them by number, series, denomination, and date of authorizing act.

"2. That Klink shall assign such bond in his own proper name, in substantially the following form:

"'I, Louis Klink, who purchased the within bond with my own money, and not as agent or trustee for any person, and caused said bond to be made payable to Jakob Maier, which name, Jakob Maier, is a fictitious name, do hereby assign,' &c.

"3. That an indemnity bond, executed by yourself as principal, and by two sufficient sureties, citizens of the United States, shall be furnished to indemnify the United States, in case any person of the name of the nominal payee shall establish a valid claim to said bonds, or right to a redemption thereof in his favor.

"When the evidence indicated in the first requirement shall have been furnished, the bonds will be returned to you to obtain the proper assignment from Klink, and a form of indemnity bond will be sent to you to be executed."

The creditors, by letter dated January, 1880, addressed to the Register of the Treasury, "object to the transfer of said bonds."

The papers came, September 13, 1880, before the First Comptroller for decision of the question involved.

Hon. John B. Hawley, of Chicago, for Jenks.

1. The names inscribed in the bonds were fictitious—Jakob Maier and Jacob Meier. This does not mean John Jacob Maier, of Aurora, who never bought the bonds, and did not know of the purchase until long after it was made. If there had been two men in Kane county named Jacob Meier, neither would own the bonds, but Klink would. The bonds were issued in two names, *Maier* and *Meier*. They could not represent one Maier only. (*Games vs. Stiles*, 14 Pet., 322.)

2. The bond contract was, that the Government would pay Klink, to whom, by the names of Maier and Meier, the bonds were issued and delivered. The maxim applies to the Government, *Nam quisque scire debet cum quo contrahit*. The Government cannot in good faith refuse to recognize him as owner.

3. The bonds being in fictitious names, purchasers from Klink without notice of the fiction acquire the full title. (1 Daniel, Neg. Inst., 2d ed., p. 120, sec. 140.)

4. The bonds are in the Treasury Department for transfer, and hence cannot be subjected to any claim, because the United States cannot be made a party to a suit. (U. S. *vs.* McLemore, 4 How., 287; Hill *vs.* U. S., 9 How., 388; Case *vs.* Terrell, 11 Wall., 199; Avery *vs.* U. S., 12 Wall., 304.)

5. The court can exercise no jurisdiction, because Jenks is in Canada and cannot be made a party. Klink has not been served with process, and the suit does not operate as notice, or *lis pendens*. (Games *et al.* *vs.* Stiles, 14 Pet., 322; County of Warren *vs.* Marcy, 97 U. S., 96.)

6. If Maier had a naked, legal title, yet Jenks took the equitable title by the assignment without notice of any claim of Maier or creditors, and hence has the superior equity entitled to protection.

T. H. Ryan, of Aurora, Illinois, for creditors, did not submit an argument.

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

The registered bonds in question are negotiable, and might properly be transferred by assignment.

If they were purchased by Klink in a *fictitious* name, and so registered, he, by the same fictitious name, might assign them to a *bonâ fide* purchaser. (Anthony *vs.* Butler, 13 Pet., 428; 1 Daniel, Neg. Inst., sec. 139; Foster *vs.* Shattuck, 2 N. H., 447; Blodgett *vs.* Jackson, 40 N. H., 26; Lane *vs.* Krekle, 22 Ia., 404; Maniort *vs.* Roberts, 4 E. D. Smith, 84; Farnsworth *vs.* Drake, 11 Ind., 103; Plets *vs.* Johnson, 3 Hill, 115; Stevens *vs.* Strang, 2 Sandf., 138; Rogers *vs.* Ware, 2 Neb., 29; Forbes *vs.* Espy, 21 Ohio St., 483; Vanbibben *vs.* Bank of Louisiana, 14 La. An., 481.)

In such case, clear proof should be required that the purchase was in a fictitious name.

As a matter of strict right, the Government is under no obligation to pay the party himself who fraudulently causes bonds to be inscribed in a fictitious name. (1 Daniel, Neg. Inst., sec. 136; Thomson on Bills, 52; Hunter *vs.* Jeffery, Peake's Ad. Cas.; Minet *vs.* Gibson, 3 T. R., 481; s. o., 1 H. Bl., 569; Gibson *vs.* Minet, 2 Brown, Par. Cas., 48.)

The danger of such a proceeding is so great, and the necessity of preventing the frauds to which it might lead is so apparent, that it is by no means to be encouraged. The Government never aids a fraud or fiction; its contract in a bond is intended to be to a real party. There is a maxim, *Ex dolo malo non oritur actio*, (Cowp., 343; Broom, Leg.

Max., 729;) and another, *Dolo malo pactum se non servaturum*, (Mason vs. Mitchell, 3 H. & C., 528.)

Dolus, among the Roman jurists, included "every intentional misrepresentation of the truth, made to induce another to perform an act which he would not else have undertaken." When the Government becomes a party to bonds, it may in strictness claim the rights of a party thereto. (2 Op., 504; 4 Op., 90, 295, 299; 8 Op., 1; 15 Pet., 377; 12 Wheat., 551; 5 How., 382; 7 Wall., 666.)

These bonds having been inscribed in the name of *Maier* and *Meier*, the presumption would be that they were the property of the persons in whose names they were respectively inscribed.

If a party purchase bonds with the money of another person, a trust, as between them, may be presumed, if no relationship or other fact exist to rebut the presumption. (Wilkinson on Public Funds, 109, 110, ed. Lond., 1839; Hooper vs. Goodwin, 1 Swanst., 485-491; Rider vs. Kidder, 10 Ves., jr., 364; s. c., 12 *Ib.*, 202; Clifford vs. Brooke, 13 *Ib.*, 133; George vs. Howard, 7 Price, 646; Wetherby vs. Dixon, Geo. Cooper's Cas. in Chanc., 279; Crabb vs. Crabb, 1 Mylne & K., 511; Kilpin vs. Kilpin, *Id.*, 520; Brown vs. Bellaris, 5 Madd., 53; Stats. 1 Jac., I, c. 15, s. 5; 6 Geo. IV, c. 16, s. 72.) In *such* case, the person in whose name bonds are inscribed can lawfully sell to a *bond fide* purchaser, and the Government may properly pay to such holder.* (Donaldson vs. Gillot, L. R., 3 Eq., 274; Royle, Law of Funds and Securities, 85, Lond., 1875; Lowry vs. Com. Bank, Taney's Dec., 310; Duncan vs. Jaudon, 15 Wall., 165.) There may be cases in which bonds may so far disclose the character of a *trust* as to make it the duty of the Government not to permit assignments in violation of the trust, as by executors under a will, &c., when the rights of creditors of an estate and of devisees may demand consideration. What might be the duty of the Government as to a bond payable to a party as *executor*, without disclosing any *special* trust, it is not necessary now to decide. But the executive officers of the Government probably cannot be called on to protect *latent* equities, even on notice. They are not clothed with such powers as are exercised by

* Whether a court of equity, having the jurisdiction of the persons of all parties in interest, could, as between a party having the legal title to bonds and his *cestui que trust*, decree the delivery of the bonds and enforce a manual assignment to the latter, see Stanton vs. Percival, 5 H. L. C., 257; George vs. Howard, 7 Price, 646; Gardener vs. Pullen, 2 Vernon, 394; Lightfoot vs. Creed, 2 Moore, 255; Royle, Law of Funds and Securities, 57, Lond., 1875; Doloret vs. Rothschild, 1 S. & S., 590; Cuddee vs. Butter, 5 Vin. Abr., 538.

If such jurisdiction could be exercised the question would arise whether, in cases of alleged and controverted trusts, the Government would remit parties to the courts to determine their rights. (Sallu's case, *ante*, 214; Safford's case, *post*, 262.)

courts in order to make the requisite investigations, by process bringing parties to a hearing, by taking evidence on notice, by process to compel the attendance of witnesses, &c. The Government contract is, to *pay the party whose name is inscribed therein*, or his assigns. It would be utterly impracticable to inquire beyond this. It would be productive of delay, interrupt the payment of interest, and involve difficulties which show the wisdom of Congress in withholding any provision for such purpose. (Royle, Law of Funds, 65, 73, Lond., 1875; Wilkinson, Pub. Funds, 143, Lond., 1839; *Ex parte Kensington*, 2 V. & B., 79; 2 Kent, 230; *Hartga vs. Bank of England*, 3 Ves., 55; *Bank of England vs. Parsons*, 5 Ves., 665; Rice case, 3 Ware, 134; *Glenny vs. Langdon*, 98 U. S., 24; *Foster vs. Bank of England*, 55 Q. B., 705, Phila. ed. 1852; s. c., 8 Ad. & Ell., n. s., 689; *Franklin vs. Bank England*, 1 Russell, 575.) Hence it is a *general* rule that the Government, in making *payment*, is only required to ascertain the *legal* holder entitled thereto. (*Story vs. U. S.*, 5 Ct. Cls., 371.) The evidence shows that Klink purchased these bonds with his own means, and caused them to be inscribed in the name of *Maier* and *Meier*, a real person, but without his consent. The effect of this is, that Meier became apparently invested with the naked, legal title to the bonds.

In 1 Daniel on Negotiable Instruments, it is said:

"SEC. 140. If the bill or note be payable to some person who had no interest in it, and was not intended to become a party to it, whether such person is or is not known to exist, the payee may be deemed fictitious. But if it be payable to some person known at the time to exist, and present to the mind of the drawer when he made it, as the party to whose order it was to be paid, the genuine indorsement of *such payee* is necessary, in order to a recovery thereon by an indorsee, even though he *have no interest in it*, and the drawer knew that fact." (*Rogers vs. Ware*, 2 Neb., 29; *Bartlett vs. Tucker*, 104 Mass., 336, 345; *Ladd vs. Rogers*, 11 Allen, 209; *Chitty, Bills*, [172,] 198; *Smith vs. McClure*, 5 East, 476; *Story, Bills*, sec. 203, n.; *Thomson, Bills*, 90; *Tucker vs. Bradley*, 33 Vt., 324; *Mason vs. Hyde*, 41 Vt., 232.)

Upon the doctrine stated by Daniel, the claimants have only an equitable title to the bonds. They may, however, become entitled to a transfer of the bonds in their favor on the books, for several reasons:

1. In favor of *bond fide* holders it may be said that, as Klink had the custody of the bonds at all times until, by the assumed name of *Maier* and *Meier*, he assigned and delivered them to the claimants; and as John Jacob Maier never assented to become invested with the legal title in them, the names Maier and Meier, inscribed in the bonds, may be regarded as fictitious. The mere possession of registered bonds, however, will not justify a purchaser in taking an assignment from the holder

who, not being the owner, falsely personates such owner, without fraud on the part of the real owner, and forges his name to an assignment. In such case the maxim applies: *Caveat emptor, qui ignorare non debuit quod jus alienum emit.* (Hobart, 99; Broom, Leg. Max., 359, 768–809; Dearle *vs.* Hall, 3 Russ., 1, 24; Keech *vs.* Hall, Doug., 21; Moss *vs.* Gallimore, *Id.*, 279, and 1 Smith, Lead. Cas., 6th Am. ed., 843, 847, *n.*; Hickman *vs.* Machin, 4 Hurlst. & N., 716, 722.) *Nam leges vigilantibus, non dormientibus, subveniunt.*

2. Notwithstanding what is said by Daniel, there would be force in affirming that Maier did not take the legal title to the bonds against his consent; and hence, as the Government sold the bonds, such title must have passed to Klink under the assumed name. (Lovejoy *vs.* Whipple, 18 Vt., 379; Tucker *vs.* Bradley, 33 Vt., 324; Mason *vs.* Hyde, 41 Vt., 232; Powell *vs.* Waters, 8 Cow., 669; Bumpass *vs.* Timms, 3 Sneed, 459; Snaith *vs.* Mingay, 1 Maule & S., 87; Barker *vs.* Sterne, 9 Exch., 684.) Maier was under no obligation to assume involuntarily the odium of a fraud or incur the peril of litigation. The presumption is, that the legal title passes to a party named in a bond; but this presumption may be, as it is in this case, rebutted. If in form, however, the legal title passed to Maier, he having made an affidavit, to be used in the Treasury Department, in this matter, and having filed an answer in the equity cause pending in court in Illinois, disclaiming any title in the bonds, he is *estopped* from asserting any claim thereto. An estoppel as effectually divests a title by operation of law as any form of assignment. (Anthony *vs.* Butler, 13 Pet., 428.) So far as he is concerned, the Government can safely transfer the bonds to the claimants. *Nullus commodum capere potest de injuriâ suâ propriâ.* (Broom, Leg. Max., 279, 287; Fisher *vs.* Magnay, 6 Scott, N. R., 588; Morgans *vs.* Bridges, 1 B. & Ald., 647; De Mesnil *vs.* Dakin, L. R., 3 Q. B., 18; Kelly *vs.* Lawrence, 3 Hurlstone & C., 1.)

3. While the general rule is that the Government will deal only with parties holding the legal title to bonds, yet, in this case, under the circumstances, if there could be an outstanding naked, legal title in Maier, *that* could not defeat the claimants. Klink having assumed the names of *Maier* and *Meier*, and having, by the names so assumed, made an assignment of the bonds, *he* is also *estopped* from asserting any title therein, or claim to the proceeds thereof; and, so far as he is concerned, the Government can safely pay the claimants. (Anthony *vs.* Butler, 13 Pet., 428.) In this and all similar cases the most satisfactory proof should be required of all material facts. It is the duty of the Govern-

ment to protect, as far as possible and consistent with public interests, the rights and just demands of innocent purchasers, holding bonds in good faith, on adequate consideration paid.

Purchasers of bonds are in duty bound to exercise reasonable care to identify parties offering to sell as the owners; and when, as in this case, unexpected difficulties intervene, the holders will be required to produce such evidence, and do such acts, as may be reasonably necessary and just to save the Government from loss.

The claimants will therefore be required: (1.) To produce proper evidence, as stated in the letter of the Comptroller of June 4, 1880, *that there is no person in Kane county, Illinois, by the name of Jakob MAIER or Jacob MEIER*, other than John Jacob Maier, of Aurora. (2.) To procure from Klink an assignment of the bonds in his own name, as stated in said letter of June 4, or show that it is impracticable to do so. (3.) To show that at the time of the assignment to them, they, respectively, had no knowledge that the name inscribed in the bonds was *fictitious*; and otherwise prove the good faith of the transaction. (4.) To procure a release from said John Jacob Maier, or show that this is impracticable. (5.) To give bond to indemnify the United States against loss or expense by reason of the transfer or payment of said bonds, and to pay any claimant who may establish a right thereto.

It is not deemed advisable to require the present claimants to establish by decree in court their rights against Maier or Klink.* It is not intended to decide that a purchaser of registered bonds is required in all cases to ascertain whether a party offering to sell holds by a fictitious name. That would destroy the validity of all assignments in fictitious names. As to ordinary negotiable instruments, such assignments, when taken in good faith, are treated as valid.

So far, principles have been stated which should govern, if the only parties concerned were *Klink, Maier*, the present claimants, and the Government. But *creditors* of Klink interpose objection to the transfer of the bonds, by reason of the pendency of the court proceeding.

There are sufficient reasons why this cannot be allowed to prevent or delay the transfer.

I.—If the claimants, Jenks, and Drexel, Morgan & Co., are to be deemed as having the legal title in the bonds, the pendency of the

*The question of jurisdiction (*ante*, 247, n.) has been alluded to in *Sallu's case*, *ante*, 214, and in *Safford's case*, *post*, 262. See Rev. Stats., 1063, 1064.

The bonds are in the Treasury Department for payment, and the parties connected therewith are in different jurisdictions, Jenks being in Canada. It might be difficult for courts to obtain the requisite jurisdiction to be available, even if the bonds were placed in their control.

equity suit in Kane county, even if they had been served with process, which they were not, does not charge them as purchasers with notice of the demand of the creditors. There is no *lis pendens* which can affect Jenks, or Drexel, Morgan & Co. (County *vs.* Marcy, 97 U. S., 105; Murray *vs.* Ballou, 1 Johns. Ch., 566; Murray *vs.* Lylburn, 2 *Ib.*, 441; Kieffer *vs.* Ehler, 18 Pa. St., 388; Diamond *vs.* Lawrence Co., 37 *Ib.*, 353; Winston *vs.* Westfeldt, 22 Ala., 760; Stone *vs.* Elliott, 11 Ohio St., 252; Mims *vs.* West, 38 Ga., 18; Durant *vs.* Iowa Co., 1 Woolw., 69; Leitch *vs.* Wells, 48 N. Y., 585; City *vs.* Butler, 14 Wall., 283.) It is not pretended that the claimants had actual notice of the pendency of the suit. There has not been and cannot be any *tacking*, on behalf of the judgment creditors, of the equitable estate in the bond to the legal, so as to secure thereby priority for them; and, under the circumstances, none could be allowed. (Broom, Leg. Max., 358; Coote, Mortg., 3d ed., 410; 2 Com. by Broom & Hadley, 310; Grant *vs.* Bank, 1 Caines' Cas., 112; Parkist *vs.* Alexander, 1 Johns. Ch., 399; Brigden *vs.* Carhartt, Hopkins, Ch., 234; Willard's Eq. Jurisp., 255.)

The claimants are, therefore, to be deemed *bond fide* purchasers.

II.—If John Jacob Maier is to be treated as having the naked legal title, and if the judgment creditors could, in the mode proposed, appropriate the bonds as between themselves and Maier and Klink, yet the judgment creditors do not occupy the position of innocent purchasers of the bonds without notice of the rights therein of the present claimants, and therefore are not entitled to divest the latter of their rights. (Tousley *vs.* Tousley, 5 Ohio St., 78.) The judgment creditors, as against Maier, could take no beneficial interest, because *he* had none. (Broom, Leg. Max., 359; Dyer *vs.* Pearson, 3 B. & C., 42, E. C. L. R. vol. 10.)

The present claimants under Klink acquired his full equitable title without any notice of the claims of the judgment creditors, who have not even yet served Klink with process or acquired any claim on, or transfer of, his interest. The claimants have (1) this prior equity, with (2) possession of the bonds, and (3) the advantage of acting on the defensive. *Qui prior est tempore, potior est jure.* (Broom, Leg. Max., 353–362.) Their possession of the bonds gives them an advantage, according to the maxim: *In æquali jure melior est conditio possidentis.* (Broom, Leg. Max., 713.) *Melior est conditio defendentis.* (Hobart, 199; East India Co. *vs.* Tritton, 3 B. & C., 289—10 E. C. L. R.; Snow *vs.* Peacock, 3 Bing., 408, E. C. L. R. vol. 41.) *In pari delicto potior est conditio defendentis.* (Stevens *vs.* Gourley, 7 C. B., n. s., 99, 108, E. C. L. R. vol. 97.)

The court in Illinois has acquired in this matter no jurisdiction which can make its decree effective.*

It is decided that the bonds, under the assignments from Klink in the assumed names of Maier and Meier, should be, on the conditions stated, (*ante*, 250,) transferred to the claimants.

TREASURY DEPARTMENT,

First Comptroller's Office, November 29, 1880.

*The question whether judgment creditors can, for the purpose of satisfying their claims, reach registered Government bonds held by judgment debtors, is one of great importance, which has been much argued in some cases, but which it is not necessary now to decide.

The usual methods attempted in somewhat but not entirely analogous cases to reach money payable by the Government, have been by (1) garnishee process against Government officers, (2) creditor's bill in equity, (3) injunction against creditors, from receiving money, with receivers appointed and authorized to collect, (4) imprisonment for fraud in refusing to convert bonds into money to pay judgment creditors, (5) proceedings in aid of execution under modern civil codes of procedure, and perhaps other proceedings with similar objects.

Under the power to "*borrow money*," the whole difficulty can be relieved by act of Congress. (*Bank vs. Supervisors*, 7 Wallace, 26; *Wright vs. Stilz*, 27 Ind., 338.)

In England a remedy for creditors has been provided by act of Parliament, 1 and 2 Victoria, c. 110. (*Wilk.*, Pub. Funds, London, 1839, ch. 13, 16, 17, 18.)

Prior to this in England it was said: "Stocks or annuities cannot be sequestered, attached, or taken in execution; they are not in any way liable to the payment of debts during the life of the proprietor, except under a commission (or *fiat*) in bankruptcy." (*Wilk.*, Pub. Funds, 258; *Royle*, Law of Funds and Securities, 58 *et seq.*)

It has been argued with much ability and force that in the United States, the States have jurisdiction of persons and property, and that State courts having equity jurisdiction can, by decree *in personam*, compel the surrender and manual assignment of bonds to receivers; can enjoin the holders from receiving interest or payment of the bonds; and can imprison for fraud in refusing to sell and apply proceeds of bonds in satisfaction of debts, and thus compel assignments under the insolvent laws. (*Trist vs. Child*, 21 Wall., 441; *Clark vs. Clark*, 17 How., 318; *Milnor vs. Metz*, 16 Pet., 221; *Glenny vs. Langdon*, 98 U. S., 23; *Phelps vs. McDonald*, 99 U. S., 307.) The authorities cited in *Wilkinson* and *Royle* show the exercise, in many respects, of jurisdiction by courts in relation to public securities.

It has been *argued*, on the other hand, that State courts cannot exercise such jurisdiction, for several reasons:

I.—That the General Government has an *independent, exclusive* power to "*borrow money*," with which no State can interfere; that if States may appropriate bonds to creditors, they may enact hostile legislation, as, for instance, to provide by law that they shall first be liable before other property; that this shows that no such power can be admitted, since it would *impair the value* of national bonds and interfere with the operations of the Government; and that the salable value of bonds may in part depend on their exemption from taxation and judicial process, which will induce investments therein, especially for widows, children, charitable purposes, &c.

1. Authorities: *Cooley*, Const. Lim., 15, 18, 482; 2 Pet., 467; 7 Wall., 24.

2. The analogy is drawn from the want of power in States to tax bonds. (7 Cinc. Am. Law Rec., 680, 692; *Weston vs. Charleston*, 2 Pet., 467; *Bank vs. City of New York*, 2 Black, 628; *Bank-Tax Case*, 2 Wall., 200; 4 Wheat., 431; *State vs. Garton*, 32 Ind., 1.)

3. Like analogy is drawn from the doctrine that State courts cannot, by injunction or otherwise, stay or arrest the process or jurisdiction of a court of the United States, and hence not of executive officers in paying bonds. (*Riggs vs. Johnson Co.*, 6 Wall., 166, 198; *Ex parte Holman*, 28 Ia., 88; *Diggs vs. Wolcott*, 4 Cr., 178, 179; 1 *Stats.-at-Large*, 335; *Duncan vs. Darst*, 1 How., 301; *Peck vs. Jenness*, 7 How., 625; *Mayor vs. Lord*, 9 Wall., 409; *Supervisors vs. Durant*, *Id.*, 736; *U. S. vs. Peters*, 5 Cr., 115; *Powell vs. Redfield*, 4 Blatch. C. C., 45; *McKim vs. Voorhies*, 7 Cr., 279; *Kendall vs. Winsor*, 6 R. I., 453; *English vs. Miller*, 2 Rich. Eq., So. C., 320; *Cropper vs. Coburn*, 2 Curtis, 465; *High on Injunctions*, secs. 61, 76, 158, 208, 602; *Osborn vs. U. S. Bank*, 9 Wheat., 738; *City Bank vs. Skelton*, 2 Blatch. C. C., 14, 26; *Schuyler*

vs. Pelissier, 3 Ed. Ch., 191; *Coster vs. Griswold*, 4 *Ib.*, 364; *Phelan vs. Smith*, 8 Cal., 520; *U. S. vs. Keokuk*, 6 Wall., 514; [*contra*, *Akerly vs. Vilas*, 15 Wis., 401;] *Parkhurst vs. Kinsman*, 2 Halst. Ch., 600; *Irving vs. Hughes*, 2 Bank. Reg., 20; *In re Wallace*, *Ib.*, 52; *In re Metcalf*, Bank. Reg. Sup., xviii; *In re Reed*, *Ib.*, i; *In re Metzler*, *Ib.*, ix; *In re Richardson*, 2 Bank. Reg., 74; *Samson vs. Burton*, 4 Bank. Reg., 1; *Same vs. Same*, 5 Nat. Bank. Reg., 459; *In re Bowie*, 1 Bank. Reg., 185; *Sedgwick vs. Menck*, *Id.*, 108; *Wilson vs. Mason*, 1 Cr., 94; *U. S. vs. Wilson*, 8 Wheat., 253; *Wayman vs. Southard*, 10 *Ib.*, 1, 21, 22; *Bank of the U. S. vs. Halstead*, *Id.*, 51; 1 *Stats.-at-Large*, 335; *Randall vs. Howard*, 2 Black, 585; *Ex parte Cabrera*, 1 Wash. C. C., 232; *Story*, Const., secs. 1757-1759; *Freeman vs. Howe*, 24 How., 450, 455; *Buck vs. Colbath*, 3 Wall., 334; *Weber vs. Lee Co.*, 6 *Ib.*, 210.)

4. State tribunals cannot by *habeas corpus* interfere with national officers in their lawful custody of persons. (*Duncan vs. Darst*, 1 How., 301; *McNutt vs. Bland*, 2 *Ib.*, 9; *Ableman vs. Booth*, 21 *Ib.*, 515; *Tarble's case*, 13 Wall., 397; *Ex parte Holman*, 28 Ia., 88; *Ex parte Anderson*, 16 Ia., 595; *Hurd*, Hab. Corp., 2d ed., 190.)

5. The salaries of officers cannot be garnisheed to satisfy creditors. (*Hawthorn vs. St. Louis*, 11 Mo., 59; *May vs. Hoaglan*, 9 Bush, 171; *Buchanan vs. Alexander*, 4 How., 20; *Divine vs. Harvie*, 7 Monr., 439; *Bank of Tenn. vs. Dibrell*, 3 Sneed, 379; *Wild vs. Ferguson*, 23 La. Ann., 752; *Stillman vs. Isham*, 11 Conn., 124; *McMeekin vs. State*, 4 Eng., 553; *Train vs. Herrick*, 4 Gray, 534; *Geer vs. Chapel*, 11 *Id.*, 18; *Ward vs. Hartford Co.*, 12 Conn., 404; *Chealy vs. Brewer*, 7 Mass., 259; *Bulkley vs. Eckert*, 3 Pa. St., 368; *Millison vs. Fisk*, 43 Ill., 112; *Ross vs. Allen*, 10 N. H., 96; *Bivens vs. Harper*, 59 Ill., 21; *Bray vs. Wallingford*, 20 Conn., 416; *Wales vs. City of Muscatine*, 4 Ia., 302; *Whidden vs. Drake*, 5 N. H., 13; *City of Newark vs. Funk*, 15 Ohio St., 462; *Mayor of Baltimore vs. Root*, 8 Md., 102; *Fortune vs. City of Saint Louis*, 23 Mo., 239; *Merwin vs. Chicago*, 45 Ill., 133; *Triebel vs. Colburn*, 64 Ill., 376; *McDougal vs. Hennepin Co.*, 4 Minn., 184; *Bradley vs. Cooper*, 6 Vt., 121; *Burnham vs. City of Fond du Lac*, 15 Wis., 193; *City of Erie vs. Knapp*, 29 Pa. St., 173; *Fellows vs. Duncan*, 13 Met., 332.)

6. If a State officer or court imprison a person for exercising a right given under National authority, the courts of the United States will release him on *habeas corpus*. "The property in inventions exists by virtue of the law of Congress, and no State has a right to interfere with its enjoyment or to annex conditions to the grant." (3 *Davis's Supplement to Ind. Stats.*, 364, n; *South Carolina Electoral College case*, 1 Hughes, C. C., 571; *Ex parte McCready*, *Id.*, 598; *Ex parte Dock Bridges*, 2 Woods, C. C., 428; *In re Bull*, 4 Dillon, C. C., 323; *Helm vs. Bank*, 43 Ind., 167; 13 *Am. Reports*, 395; *Buchanan vs. Alexander*, 4 How., 20.)

7. States cannot regulate the eligibility of National officers elected in the States. (*McCrary*, Law of Elections, sec. 228; *Turney vs. Marshall*, 1 Bartlett, Contested-Election cases, 167; *Fouke vs. Trumbull*, *Id.*, 167, 619; *Lawrence W. Hall's case*, Cong. Globe, 1857.)

8. Congress may give exclusive jurisdiction over rights arising under its laws to National courts, or exclude State remedial laws in such cases from State courts. (*Claffin vs. Houseman*, 93 U. S., 130; *Higley vs. National Bank*, 26 Ohio St., 78; *The Moses Taylor*, 4 Wall., 429; *Ex parte McNiel*, 13 *Ib.*, 236; *Bank of Bethel vs. Pahquioque Bank*, 14 *Ib.*, 383; *Martin vs. Hunter's Lessee*, 1 Wheat., 334; *Farmers' and Mechanics' National Bank vs. Dearing*, 91 U. S., 34; *Hade vs. McVay*, Allison & Co., 31 Ohio St., 237; *Blakeney vs. Goode*, 30 *Ib.*, 350; *Fisher vs. Luling*, 33 N. Y. Superior Court, 337; *Paschal*, Annot. Const., 198 n, 203, 209; *Houston vs. Moore*, 5 Wheat., 22; *Prigg vs. Pa.*, 16 Pet., 608; *Story*, Const., 3d ed., p. 615; *Glenny vs. Langdon*, 98 U. S., 24; *Nat. Bank vs. Hughes*, 2 Thomp. cases, C. C. North. Dist. Ohio, 178; *Rev. Stats.*, 5241.)

9. The same immunity is accorded to the States in like cases, thus preserving State rights. The National Government cannot tax the salary of a State officer nor the process of a State court. (*Dobbins vs. Erie Co.*, 16 Pet., 435; *Collector vs. Day*, 11 Wall., 113; *Freedman vs. Sigel*, 10 Blatch. C. C., 327; *Kentucky vs. Dennison*, 24 How., 66.)

10. It does not necessarily follow that the holder of United States notes (greenbacks) may hold them exempt from the process of State courts. Having many of the attributes of money, and being a "legal-tender in payment of debts," they stand somewhat on a different footing from ordinary bonds. (*Rev. Stats.*, 3588, 3589, 5187; 7 Wall., 30.)

II.—State courts cannot exercise the jurisdiction claimed, because (1) express laws of Congress require the money payable for interest and principal on registered bonds to be paid to the payee therein named or his assigns; (2) such is the contract written in the bond; and (3) other laws of Congress make it the duty of executive officers to pay interest and principal according to the law and the contract.

1. The laws of Congress. (*Sallu's case*, ante, 214; 16 *Stats.*, 272.)

2. The form of the bonds, as prescribed, is:

The United States of America are indebted to Jacob Meier *or assigns*, in the sum of five hundred dollars. This Bond is * * * redeemable at the pleasure of the United States, after the 1st day of July, A. D. 1907, * * * with interest * * * at the rate of four per centum per annum, payable quarterly * * *. Transferable on the books of this office.

Entered, A. B.

Recorded, C. D.

G. W. SCOFIELD,

Register of the Treasury.

This means that payment shall be made to Meier, or to any person to whom he, by his own act, shall voluntarily transfer the bonds. No court can transfer the promise. The bond is not money. It is only evidence of a future right to receive money. (Draft case, *ante*, 12-20.) The money to be paid is under *executive*, not judicial, control.

3. The duty of executive officers to pay the holder of bonds is fixed by positive law, and this executive duty cannot be interfered with by courts.

(1.) Rev. Stats., 191, 236, 248, 305, 3689, 3691, 3694, 3698. *Ante*, 14, 24, 74.

(2.) That in England it has been deemed necessary to enact statutes in aid of creditors, because at common law courts had no jurisdiction.

(3.) That transfers of title by operation of law, as to an administrator, in case of intestacy are allowed, because Congress, having the power to regulate such transfers, but having omitted to do so, has left the transfer in such case to the legislation of the States and of foreign nations, according to the *domicile* of the owner, until there may be legislation by Congress. (Wilkinson, Pub. Funds, 20; Sir Alexander Leith's case, 10 Ves., jr., 367; 4 Wall, 429; 13 *Ib.*, 236; 14 *Ib.*, 383; 1 Wheat., 334; 91 U. S., 34, 516; 93 U. S., 130; 98 U. S., 25; 26 Ohio St., 79; 30 *Ib.*, 350; 31 *Ib.*, 237; 6 Blatch. C. C., 356; Sontag Rossi case, 7 Op. Att. Gen., 68.)

No State court can divert the application of the money thus required to be paid from the person designated in the bonds and by law to receive it. (U. S. *vs.* Hall, 98 U. S., 356, 357.) The executive officers are bound to execute the statute and perform the contract according to the terms of each. When a law says that money shall be paid, and designates or authorizes executive officers to determine the party entitled to receive, it is beyond judicial power to defeat the purpose of the law. This results from the nature of the Government, the distribution of its powers, and the independence of its three great departments: the legislative, the executive, and the judicial. The power to borrow money is by the Constitution expressly vested in Congress. It is exclusively a legislative power. The courts are not invested with any part of the power. The payment of the bonds is by express statute made an executive duty. The courts are not invested with any part of that duty. The executive officers cannot interfere with judicial duties devolved on courts; and courts, especially *State* courts, cannot interfere with or direct the mode of performing such executive duties.

The exact limits of judicial power may be further shown by a classification of executive powers and duties.

These are of three classes: (a) those which are political, (b) those which require the exercise of judgment and discretion, and (c) those which are ministerial.

a. As to *political* executive powers or duties, no court has ever ventured to interfere with them, unless to protect their exercise. (Scott *vs.* Jones, 5 How., 343; Luther *vs.* Borden, 7 *Ib.*, 1; Kennett *vs.* Chambers, 14 *Ib.*, 38; Clark *vs.* Braden, 16 *Ib.*, 635; Fellows *vs.* Blacksmith, 19 *Ib.*, 366; Kentucky *vs.* Dennison, 24 *Ib.*, 66; Marbury *vs.* Madison, 1 Cr., 166, 170; Rose *vs.* Himely, 4 Cr., 241; s. c., Bee, 300; Fletcher *vs.* Peck, 6 Cr., 87; Gelston *vs.* Hoyt, 3 Wheat., 247; U. S. *vs.* Palmer, *Id.*, 610; Garcia *vs.* Lee, 12 Pet., 511; Williams *vs.* Suffolk Ins. Co., 13 *Ib.*, 415; s. c., 3 Sum., 270; U. S. *vs.* Holliday, 3 Wall., 407; State *vs.* Johnson, 4 *Ib.*, 475; Georgia *vs.* Stanton, 6 *Ib.*, 50; The Protector, 12 *Ib.*, 700; Taylor *vs.* Martin, 2 Curt., 454; Jones *vs.* Walker, 2 Pa., 688; *Ex parte* Metzger, 5 N. Y. Leg. Obs., 83; King of Spain *vs.* Oliver, 2 W. C. C., 429; Clark *vs.* U. S., 3 *Ib.*, 101; U. S. *vs.* Probasco, 11 Am. Law Reg., 419; Gibson *vs.* Gifford, 1 Bl. C. C., 529; U. S. *vs.* Baker, 5 *Ib.*, 6; Van Antwerp *vs.* Hulburd, 7 *Ib.*, 426; Peyton *vs.* Brent, 3 Cr. C. C., 424; The Hornet, 2 Ab. C. C., 35; Grossmeyer *vs.* U. S., 4 Ct. Cls., 1; U. S. *vs.* Fifteen Hundred Bales of Cotton, 15 Int. Rev. Rec., 137; cases cited, Paschal, An. Const., 195, n. 199.)

Some political questions may by *express law* be submitted to judicial arbitrament, but not otherwise. (Kendall *vs.* U. S., 12 Pet., 625; R. I. *vs.* Mass., *Id.*, 738.)

b. *Executive powers* and duties requiring the exercise of judgment and discretion have always been regarded, unless in pursuance of express law, as exclusive of and beyond judicial control.

The payment of registered Government bonds by executive officers belongs to this class of executive duties. This duty requires judgment and discretion to determine

the identity of the payees of bonds, the amount payable for interest and principal, the mode and time of payment, the selection of officers to perform the duties, the mode of transmitting funds, or the manner of executing and transmitting drafts, the authenticity of assignments of bonds, the mode of making transfers, of keeping accounts, and of determining many other questions. (Cooley, Const. Lim., 18, 115, 482; Field *vs.* People, 2 Scam., 80; 26 Ala., 439; 12 Cal., 50; 21 Mo., 549; 9 Ind., 22.)

This view is supported by the authorities as to *mandamus* and *injunction*, and others. (Ops. Attorneys-General: Wirt, 1 Op., 681, 684; Gilpin, 3 Op., 531; Legaré, *Id.*, 667, 718; Cushing, 7 Op., 80; Devens, 16 Op., 367; Brashear *vs.* Mason, 6 How., 92; Comm'rs *vs.* Whiteley, 4 Wall., 522; Gaines *vs.* Thompson, 7 *Ib.*, 351; Attorney-General *vs.* Brown, 1 Wis., 522; Davis *vs.* State, 7 Md., 161; Powell *vs.* Redfield, 4 Blatch. C. C., 45.)

a. The courts have claimed and exercised authority to compel executive officers to **PERFORM** plain *ministerial executive duties*, but never to *interfere with* or control their exercise in a manner to defeat the requirements of positive law. (See cases relating to *mandamus* and *injunction*: Sallu's case, *ante*, 214; 3 Ohio St., 187; 4 *Ib.*, 394; 7 *Ib.*, 546; 17 *Ib.*, 608; 18 *Ib.*, 544; 19 *Ib.*, 78; 22, *Ib.*, 317; Cohen *vs.* Marchant, 1 Disney, 113-4; U. S. *vs.* Co. Commissioners, 1 Mor., Ia., 31; State *vs.* Bordelon, 6 La. Ann., 68; Hommerich *vs.* Hunter, 14 *Ib.*, 221; Savage *vs.* Holmes, 15 *Ib.*, 334; Lady Topham *vs.* Duke of Portland, 31 Beav., 525; 11 H. L. Cas., 32; L. R., 5 Ch., 40, 49; 1 DeG. J. & S., 517; Williams's Appeal, 73 Pa. St., 249; Chase *vs.* Blackstone Canal, 10 Pick., 244; Morse *vs.* Middlesex, 18 *Ib.*, 443; Cooper *vs.* Williams, 4 Ohio, 253; Walker *vs.* Mad River, &c., R. R. Co., 8 *Ib.*, 38; Mooers *vs.* Smedley, 6 Johns. Ch., 28; Mayor *vs.* Meserole, 26 Wend., 132; Van Doren *vs.* Mayor, 9 Paige, 388; Livingston *vs.* Hollenbeck, 4 Barb., 10; Bouton *vs.* Brooklyn, 15 *Ib.*, 375; Gillespie *vs.* Broas, 23 *Ib.*, 370; Hyatt *vs.* Bates, 40 N. Y., 164; Warfel *vs.* Cochran, 34 Pa. St., 381.)

4. The impracticability of giving effect to the decrees of courts in attempting to appropriate Government bonds in satisfaction of claims of creditors:

(1.) The Government cannot be made a party in such suit; and an officer of the Government cannot lawfully be made a party. (Twycross *vs.* Dreyfus, Law Rep., 5 Q. B. Chan. Div., 605.)

This is determined in the numerous cases relating to *garnishee* proceedings, *mandamus*, and *injunction*.

(2.) How, then, can an executive officer *officially* know of the action of a court? He can only officially know those matters which it is his duty to consider; he is only bound to consider those matters by which he is to be governed in his official action. He cannot be governed in his official action by a decree of the courts, because no court or other power can command obedience to its determinations. The fact that the law does not permit an executive officer to be a party in court, nor give the court power to require or command obedience to its action, is evidence that it has no jurisdiction of the subject. The power to enforce obedience to decrees is of the essence of jurisdiction, without which it cannot exist. (U. S. *vs.* McLemore, 4 How., 287; Hill *vs.* U. S., 9 *Ib.*, 388; Case *vs.* Terrell, 11 Wall., 199.)

(3.) To permit the courts to control the administration of the Treasury Department is to abdicate executive power. It would be extremely difficult, if not impossible, to carry on the operations of the Treasury Department, if it could be subjected to the control of the numerous courts of the country. (Buchanan *vs.* Alexander, 4 How., 20; Hawthorn *vs.* St. Louis, 11 Mo., 59.)

5. The attempt by injunction to restrain holders of bonds from receiving interest or principal would organize a conflict between the Departments of Government.

In reply to *some* of these points, it is urged that, so far as courts can enforce the production and manual assignment of registered bonds, their jurisdiction is not amenable to the objections made; that assignments by *operation of law*, as in case of the death of the owner, &c., are recognized, and that hence assignments by decree of court may be. (Wilkinson, Pub. Funds, 20; Sir Alexander Leith's case, 10 Ves., jr., 368.)

The salaries and money due public contractors are, on grounds of public policy, protected from creditors, in order to obviate interruption of the operations of the Government; but no such policy applies as to bonds.

The above are some of the points made and authorities cited on both sides of this important question.

IN THE MATTER OF THE PER DIEM OF UNITED STATES ATTORNEYS.—PER DIEM CASE.

1. United States attorneys are, under section 824 of the Revised Statutes, entitled to *per diem* for necessary actual attendance in the courts while in session, on the business of the United States, when the courts are held at the places of abode of the attorneys. The *per diem* is not allowed for Sundays, legal holidays, or for other days when the court is not in session.
2. When a court is held elsewhere than at the place of abode of the attorney, he is entitled to a *per diem* for days in actual attendance in court. In such case, by the construction of the statute, and by long usage, the *per diem* is allowed for Sundays and legal holidays during a term, although the court be not in actual session on such days, if the attorney be necessarily detained during such times at the place where the court is held.
3. When intermissions of two or more days occur during a term, *per diem* is not chargeable.
4. An attorney, not in attendance at court, is not entitled to *per diem*, even though the court be in session: and, to be in attendance, he must be at the place where the court is held.

This is a claim for the allowance of *per diem* compensation to the United States attorney for the district of New Jersey. The facts are stated in the decision.

A. J. Falls, for the claimant:

1. The statute says, when court is held elsewhere than at the attorney's place of abode, he is to be allowed five dollars for each day of the term. It does not say for each day of his necessary attendance, as it does when the court is held at the place of his abode, but allows him a fee of five dollars for each day of the term, and does not require him to be in actual attendance.

2. Where words of a statute, fixing compensation of a public officer, admit of two interpretations, they should be construed in favor of the officer. (*U. S. vs. Morse*, 3 Story, 87; *Morse vs. U. S.*, 4 Ct. Cls., 141; *U. S. vs. Bassett*, 2 Story, 389.) There is no ambiguity in section 824, Revised Statutes; but if there be any doubt, decision should be in favor of the officer.

3. Accounts of the attorneys have been settled heretofore on the basis now claimed. (*U. S. vs. Gilmore*, 8 Wall., 330.)

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

The United States attorney for the district of New Jersey, who resides at Newark, claims *per diem* compensation for each day of the term of the United States circuit and district courts, at Trenton, including (1) days when the courts were not in session, and (2) other days when the courts *were* in session but the attorney was not in Trenton. This claim is founded upon the last clause of the following provision of law:

“For each day of his necessary attendance in a court of the United States on the business of the United States, when the court is held at the place of his abode, five dollars; and for his attendance when the court is held elsewhere, five dollars for each day of the term.” (Rev. Stats., 824.)

The original act whence this section was taken (10 Stats., 162) was approved February 26, 1853; and two months thereafter the Comptroller issued a circular, in which he said, relative to attendance of district attorneys on the courts, that—

“When held at different places from their abode, they are authorized to charge for Sundays and holidays embraced in the term.”

Terms of court are generally without intermission from beginning to end, Sundays and legal holidays excepted. But in some districts the business is transacted at irregular intervals between the opening and closing days of the term; and a whole month's intermission may be taken during a term. The Comptroller's circular does not in the reference to holidays include vacations of more than a day or two. When an attorney is away from home in attendance upon court, and it is not convenient or practicable for him to spend his Sundays and holidays at the place of his abode, *per diem* is allowed for such days. But it has always been held by this office that the attorney is not entitled to *per diem* during a vacation which affords ample time for his return home.

In some cases *per diem* has been allowed to an attorney for two or three days during a recess of the court, when detained by the business of his office at the place of holding court. But this is unauthorized, and will not hereafter be allowed. The statute expressly says that the *per diem* fee is for “attendance,” as well when the court is held away from the attorney's place of abode as when it is held at that place. An attorney not in attendance at court is not entitled to *per diem*, even though the court be in session; and to be “in attendance” he must be at the place where the court is held. The convenience of the public is promoted by the attorney's abode being at the place where the court is held; hence, it cannot be presumed that Congress intended to give a greater compensation to an attorney whose home is away from the place where the court is held than to one whose residence is at that place, for this would be an inducement to the latter to remove from the place where his presence is required. No reason can be adduced for an unjust discrimination against the resident officer.

The statute authorizes payment of *per diem* compensation for “necessary attendance” when the court is held at the abode of the attorney; and, “when the court is held elsewhere,” a *per diem* is allowed “for his attendance * * * for each day of the term.” The difference is, that a *per diem* is paid at the abode of the attorney for “necessary” attendance, while elsewhere it is for attendance without reference to the necessity of it.

There are reasons for the difference. An attorney at his abode may

incur less expense than when elsewhere, and may be presumed to be giving to his personal affairs at his abode an attention which he could not bestow on them if he were at any other place.

The compensation when court is held elsewhere than at the abode of the attorney is "five dollars for each day of the term."

Generally a *term of court* is, for most purposes, the space of time during which a court holds its session. In the computation of the term, all adjournments—that is to say, *all days of recess*—are to be included. (*Leib vs. Commonwealth*, 9 Watts, 221; *Gregg vs. Cooke*, 1 Peck, Tenn., 82; *Garner vs. Carroll*, 7 Yerg., 365; *Mendum vs. Commonwealth*, 6 Rand., 717; *Bank of Orange vs. Van Aukin*, 1 Cow., 58; *People vs. Bradwell*, 2 *Id.*, 445; *Fitzsimons vs. Salomon*, 2 Binn., 436; *Insurance Co. vs. Passmore*, 4 Serg. & R., 507; *Commonwealth vs. Sessions of Norfolk*, 5 Mass., 435.)

But the *per diem* can only be paid for *actual* attendance. If there be a recess of the court, there can be no actual attendance, and hence no right to the *per diem*. It depends on the statute, and is to be given only as authorized thereby. The statute gives no compensation *for the term*, but only for *actual attendance*.

The records do not support the assertion, made on behalf of the claimant, that accounts of district attorneys have been settled heretofore on the basis now claimed.

The claim in this case for *per diem* compensation on days when the courts were not in session, and on days when they *were* in session but the attorney was not in Trenton, is disallowed.

TREASURY DEPARTMENT,

First Comptroller's Office, November 30, 1880.

IN THE MATTER OF INTERNAL-REVENUE DRAWBACK ON MACHINERY EXPORTED.—DAVIS'S CASE.

1. Claims against the Government must be presented in strict accordance with the provisions of law relating thereto; and "regulations" which waive those provisions are void.
2. When parties present claims to any other officer than the one designated by law to receive them, they incur the risk of negligence or failure as to the forwarding of such claims in due time to the proper officer.
3. The power to receive claims implies the exercise of judgment to decide whether they are such as can lawfully be received, and have been presented in due form and at the proper time. This discretionary power cannot be delegated to another.
4. An officer has no right to *wave* the bar of a limitation fixed by law.
5. The First Comptroller is the judge of last resort, in the executive branch of the Government, as to whether payment of a claim is "warranted by law."

The act of Congress of June 30, 1864, (13 Stats., 302, sec. 171,) gave a right to a drawback for the amount of internal-revenue taxes paid

on machinery manufactured in the United States and exported. Under this act the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, adopted regulations (Series 3, No. 13, September 10, 1867) prescribing the form of evidence of export, &c., and directing that—

“When * * * executed, the collector of customs will transmit without delay to the superintendent of exports the original * * * forms. Upon receipt of the landing certificate, or a certified copy thereof, * * * by the superintendent of exports, he will, if the same is found to agree with the entry * * * and remaining proofs of shipment, issue a certificate of the amount of drawback due, and * * * transmit a complete set of original proofs, except the landing certificate, to the Commissioner of Internal Revenue.”

The act of March 2, 1867, (14 Stats., 131,) levied an internal-revenue tax of 5 per cent. *ad valorem* on steam-boilers and other machinery, payable to the proper collector of internal revenue by the manufacturer. October 18, 1867, D. H. B. Davis, as agent for Clement Toretti, of La Paz, Bolivia, contracted with Morgan, Orr & Co., of Philadelphia, for certain machinery, on which the tax—in all, \$888—was paid to the collector June 25, 1868. The machinery was shipped from New York to Aspinwall in April, May, and June, 1868; the last packages having been put, May 25, on board the ship, which was cleared June 4.

The act of March 31, 1868, (15 Stats., 59, sec. 3,) repealed the tax on machinery, with exceptions not now material, and provided—

“That, after the first day of June next, no drawback of internal taxes paid on manufactures shall be allowed on the exportation of any article of domestic manufacture on which there is no internal tax at the time of exportation; nor shall such drawback be allowed in any case unless it shall be proved by sworn evidence in writing, to the satisfaction of the Commissioner of Internal Revenue, that the tax had been paid, and that such articles of manufacture were, prior to the first day of April, eighteen hundred and sixty-eight, actually purchased or actually manufactured and contracted for, to be delivered for such exportation; and no claim for such drawback, or for any drawback of internal tax on exportations made prior to the passage of this act, shall be paid *unless presented to the Commissioner of Internal Revenue before the first day of October, eighteen hundred and sixty-eight.*”

The shipments from May 9 to July 28, 1868, were certified by the collector of customs to the superintendent of exports, who failed to transmit the proofs within the prescribed time to the Commissioner of Internal Revenue. They were not received by the latter until January 28, 1880.

The said agent, Davis, made a claim for \$888 drawback, which was, upon the written recommendation of the Solicitor of Internal Revenue,
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dated March 1, 1880, in favor of the claim, allowed March 8, 1880, by the Commissioner of Internal Revenue, in accordance with the settled ruling and practice of the Department, including this office. March 10, 1880, the Fifth Auditor stated an account for said sum in favor of the claimant. The account, as stated by the Fifth Auditor, is referred to the First Comptroller for his decision thereon; and the question presents itself, whether the latter can certify the claim, for the consideration of Congress, to the Speaker of the House of Representatives, under the acts of June 20, 1874, and June 14, 1878, (18 Stats., 110; 20 Stats., 130.)

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

The mode of preparing and presenting drawback claims of this class was prescribed by "regulations" of September 10, 1867, Series 3, No. 13, and supplement, by which it was made the duty of the superintendent of exports to transmit to the Commissioner of Internal Revenue the evidence on which claimants were entitled to drawback. The evidences of this claim for drawback were, from May 9 to July 28, 1868, presented, as the regulations require, to the proper superintendent of exports, who had abundant time for their transmission to the *Commissioner of Internal Revenue* before October 1, 1868. The *law* declares that no such claim "shall be paid unless presented to the Commissioner of Internal Revenue before the first day of October, eighteen hundred and sixty-eight."

The sole question in this case is, whether an executive officer of the Government can determine that a presentation of a claim to the superintendent of exports shall be equivalent to a presentation to the Commissioner of Internal Revenue.

In a precisely analogous case (*ante*, 194,) it was determined that the claim must have been presented within the statutory period to the *Commissioner*, and that presentation to any other officer within such period is not sufficient. A similar construction of the statute has been given (14 Op., 615) by the Attorney-General; but, despite the latter's opinion, the Commissioner of Internal Revenue, in view of what he regarded as a material fact, which was not before the Attorney-General, to wit, the existence of the "regulation" herein mentioned, soon after ruled that a refunding claim deposited *with the collector*, a reasonable time before the expiration of the period of limitation, for transmission to the Commissioner, even when, through the neglect of the collector, it did not reach the *Commissioner* until after such period of limitation, should not be treated as barred. This ruling was adhered to in the

Department, until reversed by the decision in the *Savings-Bank* case, *ante*, 194.

The head of each Department is authorized to prescribe regulations "not inconsistent with law." (Rev. Stats., 161, 251.) Regulations so prescribed have the force of law.

Regulations may be prescribed to supplement and execute a law, but not to defeat its purpose, transfer duties imposed by it, or otherwise repeal any of its provisions. They can neither change the law nor give a right inconsistent therewith. (U. S. *vs.* Barrows, 1 Abb. C. C., 351; Lennig *vs.* Maxwell, 3 Blatch. C. C., 125; Munsell *vs.* Maxwell, *Id.*, 364; Greely *vs.* Thompson, 10 How., 225; Nichols *vs.* U. S., 7 Wall., 129.) A rule of the Court of Claims, which required parties to present their claims to an executive department before that court would take jurisdiction of the cause, was declared by the Supreme Court to be unauthorized and void, because the rule "required the claimant to do what the law * * * did not require him to do." (Clyde *vs.* U. S., 13 Wall., 38.)

It was competent to prescribe regulations, in cases like the present, for the *convenience of claimants*; but if parties transmit their claims through the *superintendent of exports* they incur the risk of his negligence or want of attention as to forwarding them in due time. (14 Op., 615.) The act of March 31, 1868, (15 Stats., 59,) requires *claimants* to present drawback claims "to the *Commissioner of Internal Revenue*" within a prescribed time. This duty of claimants, *fixed by law*, cannot be *dispensed with* by a regulation. It was the *right* of claimants to present claims without the intervention of the superintendent of exports. That *right*, *fixed by law*, could not be taken away by a "regulation." The *duty* of the Commissioner of Internal Revenue to receive claims so presented was fixed by law, and no "regulation" could excuse him from its performance. An executive officer cannot, by "regulation" or otherwise, *delegate his duties* as defined by law to subordinate officers. When his office is in Washington, and the law requires the presentation of claims to him within a specified period, he cannot make the receipt of such claims within such period by subordinate officers away from Washington equivalent to a receipt by him at his office. (Nichols *vs.* U. S., 7 Wall., 131.) The power to receive claims implies the exercise of judgment to decide whether they are such as can lawfully be received, and have been presented in due form and at the proper time. (U. S. *vs.* Gilmore, 7 Wall., 492; Watkins *vs.* U. S., 9 *Ib.*, 764.) This discretionary power cannot be delegated to another. (Filor *vs.* U. S., 9 Wall., 48; The California, 1 Saw. Rep., 596.) An officer has no right to

waive the bar of a limitation fixed by law; to do so would be to ignore the law. An attempt to *waive* it would be an attempt to legislate. (Johnson *vs.* U. S., 5 Mason, 425; U. S. *vs.* City Bank, 6 McL., 130; Andrae *vs.* Redfield, 12 Blatch. C. C., 408.) The allowance of a claim by the Commissioner of Internal Revenue is *prima facie* evidence that it should be paid. (P. and T. R. Co. *vs.* Stimpson, 14 Pet., 448; Wilkes *vs.* Dinsman, 7 How., 89; Sheets *vs.* Selden, 2 Wall., 177; U. S. *vs.* Kaufman, 96 U. S., 567; 3 Op., 663; Savings-Bank case, *ante*, 198.)

The First Comptroller is required to decide whether payments are "warranted by law." (Rev. Stats., 191, 269.) A claim unsupported by evidence should not be paid; because its payment would not be "warranted by law." The Comptroller is made the judge of last resort in the executive branch of the Government as to whether payment is so warranted.

It is with great reluctance that a usage which has prevailed in the Department is changed by the First Comptroller; but where the law is plain, the duty to make such change must not be shirked. The will of Congress as declared by law must be faithfully observed.

This claim cannot be certified to the Speaker of the House of Representatives for the consideration of Congress.

TREASURY DEPARTMENT,

First Comptroller's Office, December 1, 1880.

IN THE MATTER OF CONTRACT FOR REPAVING AVENUE IN WASHINGTON CITY.—SAFFORD & CO.'S CASE.

1. An *implied* obligation of the Government to pay its creditors is as imperative on executive officers charged by law with the duty of making payment as one created in express terms.
2. Under the act of July 19, 1876, (19 Stats., 92,) the paving commission had *implied* authority to invest the reserve fund mentioned in the act in bonds, registered in the name of the Treasurer of the United States, in trust for the purposes required by the law.
3. The judicial courts cannot, in a proceeding therein pending, divest rights of persons not made parties.
4. Executive officers of the Government, charged with the duty of making payment to persons designated by law or contract under it, have no authority to require such persons to *submit to* or *await* the action of courts in proceedings, not seeking to decide which of contesting parties is the *rightful payee*, but, designed to *divest* the title of a rightful claimant for the benefit of creditors.
5. In such case, State courts have no authority to interfere with or control, directly or indirectly, the action of executive officers of the National Government.

6. Under the act of July 19, 1876, executive officers of the United States are required to pay contractors by the delivery of certain Government bonds. A duty is thus imposed, exclusively executive in character, which cannot be defeated by judicial action.
7. Executive duties are (1) political, (2) those requiring judgment and discretion, and (3) ministerial. The exercise of these powers cannot be interfered with by the courts, but the latter may by mandamus compel the *performance* of ministerial duties.
8. If a State court imprison a party for exercising a right conferred by act of Congress, the National courts are authorized to release him on *habeas corpus*.
9. The *title* to property may, under different circumstances, depend upon (1) the laws of the State, (2) an act of Congress, or (3) the laws of a foreign government.
10. When the title to property exists under an act of Congress, and no provision is made by the laws of the United States to determine to whom such title shall pass, in the event of the death, insanity, bankruptcy, &c., of the owner, the law of the domicile of the original owner will generally determine it.
11. In such cases of transfer of title *by operation of law*, executive officers of the United States, charged with a duty of paying money or delivering property to claimants under such transfer, have the incidental power, if *deemed necessary* in proper cases, to require *rival claimants* to such money or property to submit to the proper courts to determine which is the rightful claimant in fact or in law.
12. Such reference to the courts gives no sanction to the claim that they can, by decree, determine that executive officers shall not pay money due from the Government to parties designated by law to receive it.
13. Where a party makes a contract to perform services, and on performance is entitled to receive Government bonds, his right thereto before performance is capable of alienation.
14. Such right is not a "claim" within section 3477 of the Revised Statutes, which cannot be sold.
15. Section 3477 of the Revised Statutes does not, in terms, apply to an assignment of specific property in the custody of the Government, or to powers of attorney to receive such property. But its requirements should *ex abundanti cautela* be applied and required in such assignments.
16. It is essential to the validity of proceedings of directors of a corporation, at a *special meeting*, that all of the directors have notice of the time and place thereof.

The act of Congress of July 19, 1876, (19 Stats., 92,) "authorizing the repavement of Pennsylvania avenue," in Washington City, provides:

"That the President of the United States be, and he is hereby, directed to detail General H. G. Wright and General Q. A. Gilmore, of the Engineer Corps of the Army, who, with Edward Clark, of Washington, District of Columbia, shall form a commission, whose duty shall be to select and determine the best kind of pavement to be used in paving Pennsylvania avenue and all intersections of streets, avenues, and alleys crossing the same, including the triangular spaces directly connecting with the Pennsylvania-avenue pavement, abutting on parts of squares numbered two hundred and fifty-four, two hundred and fifty-six, three hundred and twenty-three, three hundred and forty-eight,

and four hundred and eight, but not including the side-walks; and to have said thoroughfare paved therewith from the northwest gate of the Capitol grounds, to and including the crossing of Fifteenth street west, with such a pavement as they, or a majority of the said commission, may agree upon.

"SEC. 2. That within ten days after the passage of this act, or as soon thereafter as may be, the commission named herein shall meet and organize by the election of a president and secretary from among their number, and shall proceed to perform the duties herein imposed upon them; and, as soon as practicable, they shall give notice for one week, in a daily paper published in each of the cities of Washington, Philadelphia, and New York, for proposals, with full specifications, for paving said avenue: *Provided*, That said pavement shall be of the best material laid in the most substantial manner, and without unnecessary delay; and that a good and sufficient bond to the United States, with sureties, to be approved by the commission, shall be exacted, guaranteeing that the terms of any contract or contracts shall be strictly and faithfully observed, and that the contractor shall keep the said pavement in good repair for the term of three years; and said commission shall retain ten per centum of the cost of the work as an additional security and a guarantee fund to keep the same in repair for the said term, which said per centum shall be invested in the Bonds of the United States, and the interest thereon paid to said contractors." (See amendatory acts, 19 Stats., 207-223.)

This act authorized the commission to contract for paving a portion of Pennsylvania avenue, for a price *to be paid the contractors*, and required the commission to—

"Retain ten per centum of the cost of the work as an additional security [to the bond given] and a guarantee fund to keep the same in repair for the said term [of three years], which said per centum shall be invested in the Bonds of the United States, and *the interest thereon paid to said contractors.*"

The Grahamite and Trinidad Asphalt Pavement Company, a corporation created under the laws of New York, became the contractor for a portion of the work, and so performed, on its part, the conditions of the contract, as to be entitled to \$20,191.50 in bonds of the United States, in which the guarantee fund was invested, which bonds are now held by the Treasurer of the United States.

Prior to December 30, 1876, this corporation made a contract with Libby, Bartlett & Kimball, and James O. Safford & Co., by which (1) Libby, Bartlett & Kimball agreed to make a loan of \$25,000 to the corporation, and to take as collateral security therefor an assignment of the ten-per-cent. reserve fund, and a power of attorney from the corporation, irrevocable, with right of substitution, authorizing them, or the party they might substitute, to demand and receive the reserve fund; and (2) Safford & Co. agreed to advance the \$25,000 to Libby, Bartlett & Kimball, and to receive, as their security for the advance,

from Libby, Bartlett & Kimball a power of attorney authorizing said Safford & Co. to demand and receive the reserve fund.

In pursuance of this contract, Safford & Co. advanced to the corporation said \$25,000 on a draft made by Libby, Bartlett & Kimball on Safford & Co. to the order of the corporation. December 30, 1876, the corporation made an assignment of said reserve fund to Libby, Bartlett & Kimball, as collateral security to protect their loan of \$25,000.* After this transaction, on the same day, Libby and Bartlett, of the firm of Libby, Bartlett & Kimball, became trustees of the corporation. May 11, 1877, the corporation executed to Libby, Bartlett & Kimball an assignment of the reserve-fund *bonds*, as further security for this loan.

June 19, 1877, the corporation made to Libby, Bartlett & Kimball a power of attorney, with a power of substitution, authorizing them to demand and receive said reserve fund and bonds. July 14, 1877, Libby, Bartlett & Kimball, by power of attorney, substituted Safford & Co. for themselves, and authorized them to demand and receive the said bonds.

June 29, 1880, the Supreme Court of the District of Columbia, on a judgment-creditor's bill in equity, filed by Baldwin & Wright against the corporation, Safford & Co., and Libby, Bartlett & Kimball, enjoined these defendants from receiving the bonds; and appointed receivers to demand and receive from the Treasurer of the United States the said bonds.

The corporation was served with process; the other defendants, being out of the jurisdiction of the court, were not served with process, but were, in fact, notified of the proceedings.

August 11, 1880, the receivers so appointed, having duly qualified, filed with the First Comptroller a paper purporting to be a revocation of the assignment, &c., of the bonds. August 12, 1880, the corporation, Libby, Bartlett & Kimball, and Safford & Co., at the suggestion of the First Comptroller, *united* in a receipt (more fully described below) for the bonds, tendering it for the delivery of the bonds to them.

Baldwin & Wright commenced in the Supreme Judicial Court of Massachusetts, at Boston, a proceeding in equity similar to that above referred to; and September 25, 1880, an injunction was granted, substantially similar to that granted by the Supreme Court of the District of Columbia. Safford & Co. (within the jurisdiction) were served with process and injunction; the other defendants (being non-residents) were not served with process, but were notified of the proceedings.

The proceedings in the courts do not allege (1) any assignment to the

* *Post*, 267.

plaintiffs, or (2) that authority has ever been given them to receive the bonds; but they do allege that the plaintiffs are (1) judgment-creditors of the corporation; (2) that said corporation was insolvent at the filing of the bills in equity; and (3) that the assignment was void, because made to an officer and stockholder of the corporation, and in violation of the New York statute.

Affidavits are filed before the First Comptroller alleging that the corporation was insolvent on and since December 30, 1876, and showing that two drafts of the corporation, to the amount of \$5,000, had been refused payment. The insolvency is denied by affidavit, but not the refusal, as stated, to pay drafts.

It is not shown that Safford & Co. had any knowledge of such refusal to pay, or insolvency, when they made the advance of money above referred to.

In Senate Executive Document No. 8, 2d session, 44th Congress, Dec. 26, 1876, the proceedings which had taken place and the contract made by the paving commission are given in full.

One provision of the contract is as follows:

"The commission, constituting the party of the first part, in consideration of the faithful performance of all and several of the foregoing covenants and agreements by the party of the second part, covenants and agrees, for and in behalf of the *United States*, to pay to the party of the second part, by a warrant or order on the Secretary of the Treasury, the sum of three dollars and seventy-eight cents for each and every superficial yard of pavement, and seventy cents per linear foot of curbing, including its foundation along the railroad tracks, the same being constructed and completed by the said party of the second part in accordance with the terms of this agreement and to the satisfaction of the party of the first part, said payments to be made from time to time, if funds be available for the purpose, as often as five thousand superficial yards of said finished pavement are accepted by the party of the first part; reserving, however, such portion, not exceeding twenty per cent. on the contract price of said finished pavement, as the party of the first part shall deem proper.

"When the entire work shall have been completed in accordance with the conditions of this agreement, *the reserved balance will, if funds be available, be paid over to the party of the second part* in the manner hereinbefore described, with the exception of ten per centum of the entire cost of the work, which will be retained as provided in the second section of the act approved July 19, 1876, and invested in the bonds of the United States, the interest thereon being paid to the party of the second part."

The reserve-fund bonds are as follows: Two of \$10,000 each, numbered 9359 and 9360; one of \$500, numbered 17224; two bonds of \$100 each, numbered 35628 and 35629; one \$50, numbered 7884. They are registered bonds, and stand in the name of "*Treasurer U. S. in trust for the Grahamite and Trinidad Asphalt Pavement Company.*"

October 15, 1880, the president of the paving commission transmitted to the Secretary of the Treasury the final voucher of that date, being an account stated against the United States in favor of the corporation, showing a balance due the latter of \$20,191.50. After the injunction in the District, the commission gave a duplicate voucher to the receivers.

The resolution of the trustees or directors of the corporation, of December 30, 1876, (*ante*, 264,) is as follows:

“Resolved, That the President be, and he is hereby, authorized to assign the equity of the company in the ten per cent. retained by the Government of the United States, after completion of Washington contract, to secure the loan of \$25,000 made to the company this day by Libby, Bartlett & Kimball.”

The assignment thus authorized was made by the president of the corporation; it is attested by only one witness, is without the corporate seal, and is not acknowledged before any officer. The assignment of May 11, 1877, is signed by the president of the company under the corporate seal, without any witness, and is not acknowledged before any officer. The instrument of substitution of July 14, 1877, is signed by Libby, Bartlett & Kimball severally, without any witness or acknowledgment before an officer. The power of attorney, &c., of June 19, 1877, is signed by the president of the corporation, without the corporate seal; it is attested by H. H. Porter, secretary, and William H. Libby, (of Libby, Bartlett & Kimball,) and is not acknowledged before any officer.

The question, What disposition should be made of the bonds? was elaborately argued orally and in writing before the First Comptroller by Hon. *Samuel Shellabarger* and Hon. *Jeremiah M. Wilson*, for Safford & Co., and by *John W. Ross* and *Mills Dean*, who also submitted a printed brief, for Baldwin and Wright.

Shellabarger and Wilson presented points and authorities as follow:

I. The proceedings in the court of this District, so far as they relate to non-resident defendants not served with process, in no way bind or affect them. This applies to and includes Libby, Bartlett & Kimball and James O. Safford & Co.

1. Under the Constitution and judiciary act of 1789, no person could be sued, in cases like this, except he could be served in the District. (Conkling's Practice, 157 and 158, and cases cited.)

2. The act of 1839, Feb. 28, (5 Stats., 321, sec. 1,) so far changed this as that one defendant being found in the district, a suit at law or in equity may proceed against the party or parties “found,” but “the judgment or decree rendered therein shall not conclude or prejudice the other party not regularly served with process.”

3. Section 8 of act of 3d March, 1875, (18 Stats., 472,) is the legislation now in force; and this act only suffers a non-resident to be affected

or bound by a decree when the proceeding is one "to enforce any legal or equitable lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where the suit is brought."

"Claim to," &c., in this act means a *specific* interest or property in the thing, existing before the action, and which the action is authorized to enforce.

4. Hence the injunction, &c., in this court has no manner of force as against Libby, Bartlett & Kimball, or against James O. Safford & Co.

II. But even if Safford & Co. and Libby, Bartlett & Kimball were in court, yet no action of the court can affect their right, as between the executive of the United States and themselves.

1. The pavement act (19 Stats., 92) expressly makes the 10 per cent. a "retained fund" in the hands of the United States, a mere "additional security" for a designated thing, and compels the investment thereof in United States bonds and requires their "interest" to be paid to the "contractor." The effect of this is to make the legal relation of the United States to these bonds that of a holder of specific chattels (bonds) belonging to a citizen, as collateral security. That is, the United States is a trustee merely; and, after performance of the act secured by the collateral, the obligation of the United States to deliver the collateral to the owner (contractor or his agent) is made a "perfect" or absolute statutory obligation of the executive.

2. This being so, it brings the case precisely within the decision of the Attorney-General of 11th July, 1879, and of the exactly equivalent decision of the First Comptroller in Hall's Tennessee case, page 15, Decisions of First Comptroller Lawrence.*

3. It being expressly admitted by Baldwin & Wright, by the fact that they have failed to sue either the United States or any officer thereof, that the United States cannot be enjoined or restrained as to the delivery of these bonds, it inevitably results from this that so neither can the correlative act of the citizen in receiving them from the United States be at all interfered with by the courts.

(a.) If the citizen may be forever prohibited from *taking* from the United States the bonds, then the correlative act of the executive of *delivering* them to him is, literally and forever, rendered a legal impossibility, and the execution of the laws is rendered impossible.

(b.) If it can be done in *this* case by the courts, then it can be done in every case. This is an extreme case. It is thus extreme because (1) there is no possible doubt or danger as to the Government being *safe* in delivering them to the contractor's attorney, since a receipt is tendered by the contractor, by the first assignee and donee of the borrower, and by the *substituted* donee, (Jas. O. Safford & Co.) (2.) It is not even hinted that Baldwin & Wright will not have a perfect remedy against Safford & Co., as perfectly responsible parties, if it should turn out that Baldwin & Co. have the best right in law to these bonds. (3.) The statute makes it the plain duty of the executive to deliver the bonds to the contractor or his duly appointed agent.

Hence if, in *this* case, you must wait until the courts tell the United States whom it shall deliver these bonds to, then no case can be conceived wherein the Government can be suffered to go on with the execution of the laws, should the courts undertake to take charge of such execution.

*Draft case, *ante*, 11-24.

III. The authorities thoroughly establish that wherever money or property is due from a Government to a citizen, there the court cannot, by *garnishment*, *attachment*, or *injunction*, prevent the citizen from *receiving* or the Government from *delivering* the thing so owing. And these authorities show the absurdity of the position that though the Government cannot be enjoined from *paying*, yet the citizen can be enjoined from *receiving*.

IV. So, too, the authorities are direct and conclusive that neither the State nor the Federal courts can enjoin the citizen from transacting, with his Government, any business which the laws, *as administrable by the executive*, authorize or require him to transact, whether the transaction be the receipt of his dues under a contract or any other thing.

1. The cases bearing on this in its *general* aspects are as follows: 11 How., 272; 17 How., 284; *Ib.*, 225; 4 Wall., 522; 5 Wall., 563; 7 Wall., 352; 9 Wall., 298–312.

2. The authorities on this *exact* proposition are: 1 Op., 681; *Ib.*, 684; 6 Op., 226; 11 Op., 118; 4 How., 20; 2 Cr. Cir. Ct. R., 544; 3 Pet., 292; and the opinion of Attorney-General of July 11, 1879, and of First Comptroller above cited.

V. That this corporation is not extinct is shown by the fact that Baldwin & Wright sue it as alive, and by the fact that it cannot be collaterally attacked as defunct, and can only be dissolved by the judgment of a court. (*Angell & Ames on Corp.*, 10 ed., sec. 777, and note; 4 Otto, 308; 24 How., 283.)

VI. The New York statute does not prohibit an officer of an insolvent corporation, or one owing for more than one year matured debts, from making to it a loan, and taking by assignment collateral security. The act only applies to assignments to "pay debts." But this is not material, because the assignees were, in this case, not stockholders or officers, when the resolution of board, authorizing the assignment to secure the \$25,000 loan, was passed, nor when the loan was agreed to be made.

Ross & Dean, for Baldwin & Wright:

FIRST. This final voucher represents an amount due the paving corporation for work done under the contract. No rights *vested* in the company by the statute. Its claim inured wholly by virtue of the contract, which required certain work to be done by June 1, 1877, and certain other work after May 19, 1880. To secure the faithful execution of the deferred work in 1880, the contract stated that at date of acceptance the contractor would be entitled to nine-tenths of the contract price, and that the other tenth shall be "retained," as provided in the act of Congress, &c. Neither the law nor the contract fixed any date at which the one-tenth should become payable.

When the pavement was accepted, May 19, 1877, the company had no vested right to the one-tenth. Its rights were contingent: 1. Upon the work lasting three years. 2. Upon its repairing defective places during the three years. 3. Upon its restoring the surface to the original thickness after the three years had expired.

Until that stipulated thickness of surface should be restored, the contract would still be open and unperformed, and, until the whole pavement should be approved and accepted after the expiration of three years, no right accrued even to the company to make a demand for payment. Its rights would not become the subject of transfer until

the work should be performed and a Treasury draft should issue upon the amount finally certified by the commission. (U. S. *vs.* Gillis, 95 U. S. Rep., 412; *Spofford vs. Kirk*, 97 *Id.*, 488.)

SECOND. The papers relied on as passing title from the company to Libby, Bartlett & Kimball, bear date December 30, 1876; May 11, 1877; and June 19, 1877, respectively. If, on any of these dates, the company's claim had been allowed, its amount ascertained, and a warrant had issued for the payment thereof, none of said papers could be operative under section 3477 of the Revised Statutes.

That of December 30 names no definite amount, has only one witness, and was not acknowledged before any officer. Corporate seals are required to all instruments which are sealed instruments, when executed by individuals or natural persons. (Field on Corporations, sec. 284.)

An assignment is a specialty, and must be under seal. There is no seal of the corporation attached in this instance.

The paper dated May 11, 1877, was not witnessed by even one witness, and was not acknowledged before any officer.

The paper dated June 19, 1877, completes the list of attempted transfers from the company to Libby, Bartlett & Kimball. It purports to be a power of attorney. The only witness is Libby, one of the grantees of the power, who was clearly incapacitated to prove a paper to which he was a party. And it was not acknowledged before any officer.

No document having been executed to Libby, Bartlett & Kimball, which, under the law and rules of the Treasury, could pass title to them, of course they could not confer title on any one else. And if they had title, their power of attorney of date July 14, 1877, to Safford & Co., was inoperative, not having been acknowledged before any officer, and not being witnessed by even one person.

The resolution and receipt of August 12, 1880, could not, under the law, pass title to the proceeds of this voucher. The claim had not been allowed, nor its amount ascertained. The amount named in the "receipt" does not correspond with the voucher. No warrant had issued. The title, being in the company, could not pass, except in the mode prescribed by law. Connected with the action of August 12, was neither attestation nor acknowledgment.

THIRD. The Grahamite Company existed only by virtue of the general incorporation laws of the State of New York. The statute of that State (vol. 2, Rev. Stats. N. Y., p. 399) renders null and void all transfers and assignments made in contemplation of the insolvency of the company to any person whatsoever. A suit on its notes for \$10,000 has been and is still pending against the company in this District since October 16, 1876. Another suit for over \$38,000 was begun against it here April 27, 1877: Having received warrants from the commission for over \$112,000 up to December 30, 1876, owing Baldwin & Wright then over \$19,000, without the ability to pay, how could it have been other than insolvent if it could not proceed without borrowing \$25,000 from two of its directors, and could furnish no other collateral than what it hoped to earn three years thereafter? Both suits were pending at the date of each successive attempted transfer of 1877, and in addition it owed Baldwin & Wright over \$30,000 when the transfers of May 11 and June 19 were made. If reliance be placed on the action taken August 12, 1880, as the transfer, the record shows that at that date an execution for more than \$22,000 had been returned unsatisfied;

the \$10,000 Wood & Co. suit was pending; a sworn bill in equity, alleging insolvency, had been filed, and receivers had been appointed by a court having jurisdiction.

FOURTH. The same section of the New York Revised Statutes, vol. 2, page 399, renders null and void any transfer of corporate property or choses in action to any director or stockholder, directly or indirectly, for the payment of any debt, after the company shall have refused the payment of any of its notes or other evidences of debt. The proofs of such refusal are referred to under the preceding division, and show that the company could not make such transfer at any time from October 16, 1876, to the present time.

The only questions are, Were Libby & Bartlett stockholders or directors, and was the fund attempted to be assigned to them in payment of any debt? They became stockholders prior to December 30, 1876, else they would not have been eligible to be elected directors December 30, 1876, as shown by the record. That Libby continued to act is shown by his resignation, on file, of date December 26, 1878. Bartlett's letter to Hon. A. G. Porter, January 30, 1879, describes him as director. The affidavits of Davies and De Smedt show the same facts as to 1876-'77 and 1879. The records of the meeting of August 12, 1880, certify that both were then members of the board, but at that meeting only three directors were present. If the object or result of that meeting was to finally consummate an invalid transfer of the assets of a corporation then certainly insolvent, what was the situation? The man Libby was one of the requisite three who were trying to transfer the only chose in action the company had in payment of the company's debt to—whom? Not Safford & Co., for the Grahamite Company never contracted with or borrowed from them. The resolution of the board, on file, states the assignment to have been made "to secure the loan of \$25,000 made to the company this day by Libby, Bartlett & Kimball." The company knew no other creditors, as shown by its records, both of that date and of August 12, 1880. Libby, director, makes the quorum to transfer to Libby, creditor, to Bartlett, director and creditor, and Kimball.

"A director cannot have any personal interest in a contract between his company and a third person." (36 Ind., 60; 4 How., 503; 30 Barb., 553; 16 Md., 456; 60 Ill., 138; Field on Corporations, sec. 397, and page 429.)

FIFTH. On and prior to August 12, 1880, an order of the supreme court of this District was in force enjoining the company, Libby, Bartlett & Kimball, and Safford & Co., their agents, attorneys, and assignees, from collecting or receiving the proceeds of this final voucher; and receivers had qualified, under an order of the court, at the suit of the unpaid sub-contractors, to hold said proceeds subject to the order of the court. The company was in court by service on its president, and by appearance of counsel, and certified copies of the order served on Libby, Bartlett & Kimball, and Safford & Co.

By an order of the Supreme Judicial Court of Massachusetts, dated September 25, 1880, Safford & Co. were enjoined from collecting by themselves or attorney, and from assigning.

State courts may rightfully prohibit citizens within their jurisdiction from prosecuting claims to property outside the limits of the State. (High on Injunctions, sec. 60, and note 1 to sec. 57; *Massie vs. Watts*, 6 Cranch, 148, and cases there cited; *Dehon vs. Foster*, 4 Allen, 545; *Great Falls vs. Wooster*, 23 N. H., 470.)

It is no interference with the executive branch for the judiciary to adjudge that a bankrupt may not collect a claim at the Treasury, but that his assignee may; that a claimant is insane, and that his committee is competent to act; that the claimant is dead, and his administrator has qualified; that a corporation is insolvent, and that its legal successor is a receiver; that an assignment is fraudulent, inoperative, or void, and that the assignee ought not to take. The Attorney-General has held, in the Doyle-Giddings case, that where there are several claimants to the same fund, the executive officer may properly submit to the adjudication of a court as to contested facts. The Second Comptroller has held that a receipt of a receiver is a valid discharge to the Government. (Abs. Decisions Second Comp., p. 118; MS. vol. 17, p. 439.)

SIXTH. By the act of July 19, 1876, Congress named a commission to execute that law. They were invested with authority to advertise for proposals, let contracts, and issue warrants to the contractors in payment for work as, in their discretion, they might deem safe and proper. It was the commission which was required to retain the ten per cent. as a guarantee fund, and a fund to keep the pavement in repair for three years.

The commission, then, are a part of the executive branch of the Government for the special purpose contemplated by the act.

As such part of the executive department, they have submitted it to the jurisdiction of the court, by the delivery of the final warrant to the receiver as the legal representative of the company. That warrant being the only evidence of the indebtedness of the United States to the company known or authorized by the act of Congress, and the commission, its lawful custodians, having, as a part of the executive department, delivered it to the court, it is submitted that there need be no embarrassment touching the question as to submission of questions of law involved herein to the adjudication of the court.

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DECISION BY WILLIAM LAWRENCE, *First Comptroller* :

The act of July 19, 1876, requires the *interest* on the bonds, to which reference is therein made, to be paid to the *contractors* to whom the commission therein appointed should award the contract. The contract made, as authorized by that statute, requires, by implication, if not in express terms, the delivery of the United States *bonds* to the *contractors* when entitled thereto under the provisions of the act. The *contractors'* *right* to such delivery, in payment for work done, is, if implied, as clear, and the obligation as imperative, as if stated in exact words. (National Bank *vs.* Matthews, 98 U. S., 625.)

The paving commission had a right to employ all necessary and proper agencies for the execution of the law. The appointment of the Treasurer of the United States as a custodian of the bonds was a proper exercise of this right; and it is the duty of this commission or its agencies—*executive officers* of the Government *appointed by the law* to execute the law—to make payment to the party entitled to receive the bonds.

It is not to be assumed that there is no officer or person charged with

the duty of executing the law. Strictly, the trust inscribed in the bonds should have been for the purposes named in the act, because, in fact, a small part of the bonds has been charged with the expense of keeping the pavement in repair; but the form of trust expressed in the bonds is subject to the law.

The request which is now made on behalf of the plaintiffs, in the proceedings in the courts, is, that the executive officers shall await the decisions of the courts and conform to them. This request cannot, for several reasons, be complied with.

I.—No court *has obtained*, or can obtain, the requisite jurisdiction.

1. Jurisdiction may exist in favor of creditors by a proceeding *in rem* as to tangible chattels, and, in some cases perhaps, as to choses in action, if the court can acquire the *custody* of them, and give notice, actual or constructive, as the law may authorize, to all parties in interest; or it may, in proper cases, exist without custody, if all the parties in interest can be served actually or constructively with process or notice obligatory on them by law. (Herman, Estoppel, sec. 103; 1 Inst. Lib. 4 Tit., 16, 17; Woodruff *vs.* Taylor, 20 Vt., 65.) But neither of the courts whose authority is invoked has obtained, or can obtain, jurisdiction over the persons of all the parties in interest, without their consent, which has not been given; hence, no decree in the matter can be made. (Kendall *vs.* U. S., 12 Pet., 527; Rhode Island *vs.* Massachusetts, *Id.*, 657; Herndon *vs.* Ridgway, 17 How., 424; Grignon's Lessee *vs.* Astor, 2 How., 338; McPherson *vs.* Cunliff, 11 S. & R., 429; Sallu's case, *ante*, 223.)

2. No executive officer has authority to place the bonds in the custody of either court; and even if there were such authority, neither court could acquire such jurisdiction of the persons of all parties in interest, as to authorize a decree disposing of the bonds. (Case *vs.* Terrell, 11 Wall., 199; U. S. *vs.* Ames, 1 Woodbury & Minot, 76; Carr *vs.* U. S., 98 U. S., 437.)

3. If both courts could now proceed in the matter, it is not certain that they would reach the same conclusions of fact or of law, or decree the same disposition.

The pavement company was first served with process of the Supreme Court of the District of Columbia. Safford & Co. were first served with process of the Supreme Judicial Court of Massachusetts, in the suit at Boston.

The question of determining which of these courts should direct the action of the executive officers, if that could be allowed, in making disposition of the bonds, might be extremely perplexing.

4. If it be said that the executive officers should require the parties to *consent* to jurisdiction, and refuse to act until an appearance has been entered by them, the objections to such action by the officers are insuperable.

Executive officers have no authority to *ask*, much less to *enforce*, obedience to such requirement in such case as this. (Case *vs. Terrell*, 11 Wall., 199; U. S. *vs. Ames*, 1 Woodbury & Minot, 76.) Where the law has conferred no authority to give or enforce a command, none can be given. The inconvenience, if not impossibility, of the course suggested, so as to make it generally applicable, will be perceived upon reflecting that, even if the appearance of all parties in interest were entered in court, the death of one or more of them, pending the proceedings, might necessitate the appearance in court of heirs, infants, or insane persons residing beyond its jurisdiction. Other difficulties might also intervene: *e. g.*, the executive officers, in case of conflicting process, orders, or decrees, could not obey all, and would be either paralyzed in their action by inability to decide between them, or else obliged to disobey some of them. Besides, the National Government could not afford to be dependent on State courts for the direction of its executive duties. (Glenny *vs. Langdon*, 98 U. S., 25.)

5. Congress *could* give the National courts jurisdiction (1) to determine the rights of parties under this contract, and (2) to protect and aid creditors of such parties. The Revised Statutes (sec. 1063, *et seq.*) provide for a reference of the *conflicting claims* of different claimants in certain cases not applicable to this controversy, but have made no provision for *creditors* of claimants. It is not necessary now to say that there is no remedy for these in any case, in any court, in any form. It is sufficient here to say that no statute has provided a remedy in the form now attempted.

6. If the Massachusetts court had jurisdiction now of all the parties in interest, it is a little difficult to perceive how it could punish its citizens, Safford & Co., for receiving bonds of the executive officers of the United States outside of Massachusetts, in the District of Columbia, which latter is under the sole jurisdiction of the United States.

Laws do not generally have any extra-territorial operation. Judicial power can rarely have a wider range of authority. There may be exceptions, peculiar in character, where a State gives effect within its boundaries to acts of its citizens performed without its boundaries. (Lehman *vs. McBride*, 15 Ohio St., 573; Paschal, Ann. Const., 2d ed., p. 146, note 141; Rorer, Inter-State Law, 167; Story, Conf. L., 7th ed., secs. 29, 38, 278, 556; Milne *vs. Moreton*, 6 Binn., 361; State-Tax case, 15 Wall.,

326; *Ogden vs. Saunders*, 12 Wheat., 214; *Baldwin vs. Hale*, 1 Wall., 223.)

In *Ableman vs. Booth*, 21 Howard, 506, Chief Justice Taney said:

“No judicial process [of any State], whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued; and an attempt to enforce it beyond these boundaries is nothing less than lawless violence.”

So in *Mills vs. Duryee*, 7 Cranch, 486, Mr. Justice Johnson held this energetic language:

“There are certain eternal principles of justice which never ought to be dispensed with, and which courts of justice never can dispense with but when compelled by positive statute. One of those is, that jurisdiction cannot be justly exercised by a State over property not within the reach of its process, or over persons not owing them allegiance or not subjected to their jurisdiction by being found within their limits.”

It seems to be settled in England that courts of equity in that country will act in *personam*, and restrain persons within its territorial limits from using the tribunals of a foreign State contrary to good conscience. (High, Injunc., secs. 57, 60, and *n.*) Those courts have been invested with some extraordinary powers. (*Penn vs. Baltimore*, 1 Ves., sr., 444; *Toller vs. Carteret*, 2 Vernon, 494.) This power in *personam* has been asserted in some of our States. (High, Injunc., sec. 60; *Dehon vs. Foster*, 4 Allen, 545; *Keyser vs. Rice*, 47 Md., 203; *Hayes vs. Ward*, 4 Johns. Ch., 123; *Vail vs. Knapp*, 49 Barb., 299; *Mitchell vs. Bunch*, 2 Paige, 606; *Massie vs. Watts*, 6 Cranch, 148.) It is denied in other cases. (*Burgess vs. Smith*, 2 Barb. Ch., 276; *Williams vs. Ayrault*, 31 Barb., 364; *Carroll vs. Farmers', &c., Bank*, Harring. Mich. Ch., 197.) The exercise of such a power here might sometimes become, in effect, an attempt by one State to exercise a jurisdiction reaching into another; and this would be utterly inconsistent with comity and State independence. (7 Cincinnati Am. Law Rec., 674, 698.) But the authority may, in proper cases, be exercised. (*Phelps vs. McDonald*, 99 U. S., 298; *Miller vs. Sherry*, 2 Wall., 249; *Mitchell vs. Bunch*, 2 Paige, 606; 2 Story, Eq., 12th ed., sec. 899.) State courts cannot interfere with proceedings in National courts, or with the authority of National executive officers in such a case as the present one. (Draft case, *ante*, 14; *Schuyler vs. Pelissier*, 3 Edw. Ch. 191; *Coster vs. Griswold*, 4 *Ib.*, 364; High, Injunc., sec. 61; *Phelan vs. Smith*, 8 Cal., 520; *Riggs vs. Johnson Co.*, 6 Wall., 166; *U. S. vs. Council of Keokuk*, *Id.*, 514; *Hines vs. Rawson*, 40 Ga., 356; *Bryan vs. Hickson*, *Id.*, 405; *Kendall vs. Winsor*, 6 R. I., 453; *Suydam vs. Broadnax*, 14 Pet., 67, 75; *Union Bank vs. Jolly's Adm'rs*, H. Ex. Doc. 81—19

18 How., 503; *Watson vs. Tarpley, Id.*, 521; *Blanchard vs. Russell*, 13 Mass., 1; *Rorer*, Inter-State Law, 207; *Story*, Const. Law, 19, 20, 538, 543; *Boyce's Executors vs. Grundy*, 9 Pet., 275; *Watkins vs. Holman*, 16 *Ib.*, 26; *Northern Indiana Railroad Co. vs. Michigan Central Railroad Co.*, 15 How., 233; *Wilkinson vs. Leland*, 2 Pet., 627; *Watts vs. Waddle*, 6 Pet., 400; *Nowler vs. Coit*, 1 Ohio, 236; *Brown vs. Edson*, 23 Vt., 435; *Latimer vs. U. P. Ry.*, 43 Mo., 105; *City Ins. Co. vs. Com. Bank*, 68 Ill., 348; *Tardy vs. Morgan*, 3 McL., 358; *Price vs. Johnston*, 1 Ohio St., 390; *Brine vs. Ins. Co.*, 96 U. S., 627; *McCulloch vs. Maryland*, 4 Wheat., 431; *Bank vs. Supervisors*, 7 Wall., 30.) It will be shown that such interference even by indirection with the authority of National officers cannot be permitted; and generally the State authorities are equally protected from National interference.

II.—The disposition of the bonds in question is, under the *law* and the *contract*, an *executive duty*, exclusive in its character, admitting of no judicial interference. There are several reasons for this.

1. In our system of Government there are three great departments—Legislative, Executive, and Judicial. Each is independent of the other to the extent that whenever the law assigns a duty to one, it cannot, as a general rule, be defeated or *interfered with* by any of the others. (Draft case, *ante*, 13; *Dodge vs. Woolsey*, 18 How., 347; *Powell vs. Redfield*, 4 Blatch. C. C., 45; 10 Sparks's Washington, 537,—Conf. between Jefferson and Genet; *Amy vs. Supervisors*, 11 Wall., 136; *Farr vs. Thompson, Id.*, 139.)

Executive powers and duties are of three kinds: (1) those which are by their nature political; (2) those which require the exercise of judgment and discretion; and (3) those which are merely ministerial.

It is competent for Congress to give the courts control over any of these duties which are created by act of Congress, and are not vested by the Constitution in the Executive branch. (*Kendall vs. U. S.*, 12 Pet., 625; *Rhode Island vs. Mass., Id.*, 738; *Bank vs. Supervisors*, 7 Wall., 30; *Wright vs. Stilz*, 27 Ind., 338.) But until such power of judicial control shall be given, executive duties cannot be interfered with by courts; though ministerial duties may be enforced by mandamus, but not changed, interrupted, or their performance prevented.

It will be sufficient to refer, in support of what is here said concerning executive powers and duties, to a few of the many decisions relating to each kind:

(1.) As to which are political, see *Marbury vs. Madison*, 1 Cr., 170; *Gelston vs. Hoyt*, 3 Wheat., 247; *U. S. vs. Palmer, Id.*, 610; *The Divina*

Pastora, 6 Wheat., 52; *Garcia vs. Lee*, 12 Pet., 511; *Williams vs. Suffolk Ins. Co.*, 13 Pet., 415; *Scott vs. Jones*, 5 How., 343; *Luther vs. Borden*, 7 How., 1; *Kennett vs. Chambers*, 14 How., 38; *Doe vs. Braden*, 16 How., 635; *Fellows vs. Blacksmith*, 19 How., 366; *U. S. vs. Holliday*, 3 Wall., 407; *State of Georgia vs. Stanton*, 6 Wall., 50; *The Protector*, 12 Wall., 700.

(2.) As to those requiring the exercise of judgment and discretion, see *Brashear vs. Mason*, 6 How., 92; *Gaines vs. Thompson*, 7 Wall., 347; *Van Antwerp vs. Hulburd*, 7 Blatch. C. C., 426.

(3.) As to those which are merely ministerial, see *Commissioner of Patents vs. Whiteley*, 4 Wall., 522; *McElrath vs. McIntosh*, 11 Law Rep., 399; *Ex parte Reeside*, *Id.*, 448; *Buckles vs. U. S.*, 20 Law Rep., 630; *Walker vs. Smith*, 21 How., 579; *Astrom vs. Hammond*, 3 McL., 107.

It is by virtue of the lines of demarcation between the respective Departments of the Government that it has been determined that money due from the Government to a party designated by law or contract to receive it, cannot generally be appropriated, "by injunction, mandamus, or any other process of law," to pay the liabilities of such party.

Thus, in 1855, Rafael and Manuel Armijo sued out, in the Territorial court of New Mexico, process of injunction and mandamus against the governor, as superintendent of Indian affairs, to compel him, as such, to pay, out of the general moneys of the Government in his hands, an indemnity to the petitioners for losses suffered by them through the depredations of the Apaches.

The Attorney-General (7 Op., 80) gave it as his opinion that "the courts have no jurisdiction or authority over such moneys of the Government in the hands of the superintendent, either by injunction, mandamus, or any other process of law," and said that it "has been repeatedly decided by the Supreme Court of the United States that the courts have no jurisdiction or authority over the moneys of the Government in the hands of its agents, and that such moneys cannot be enjoined nor controlled by mandamus."

To the same effect are 1 Op., 681-684; 3 Op., 531, 718; 7 Op., 80; and 16 Op., 367.

This doctrine is supported by the following cases, namely: *McNutt vs. Bland*, 2 How., 15; *Buchanan vs. Alexander*, 4 How., 20; *Peck vs. Jenness*, 7 How., 612; *Erwin vs. Lowry*, *Id.*, 172; *Williams vs. Benedict*, 8 How., 107; *Hill vs. U. S.*, 9 How., 386; *Reeside vs. Walker*, 11 How., 272; *Peale vs. Phipps*, 14 How., 368; *Wiswall vs. Sampson*, *Id.*,

52; *U. S. vs. Guthrie*, 17 How., 284; *U. S. vs. Seaman*, *Id.*, 225; *Taylor vs. Carryl*, 20 How., 596; *Weston vs. City Council of Charleston*, 2 Pet., 468; *Harris vs. Dennie*, 3 Pet., 292; *Vaughan vs. Northup*, 15 Pet., 1; *Wayman vs. Southard*, 10 Wheat., 46; *Commissioner of Patents vs. Whiteley*, 4 Wall., 522; *U. S. vs. The Commissioner*, 5 Wall., 563; *Gaines vs. Thompson*, 7 Wall., 347; *The Secretary vs. McGarrahan*, 9 Wall., 312; *Trist vs. Child*, 21 Wall., 441; *Glenny vs. Langdon*, 98 U. S., 23; *Carr vs. U. S.*, *Id.*, 437; *U. S. vs. Hall*, *Id.*, 356, 357; *Walden vs. Skinner*, 101 U. S., 589; *McBride vs. Schurz*, Sup. Ct. U. S., Oct. term, 1880; *Clark vs. Hackett*, 1 Cliff., 273; s. o., 1 Black, 77; *Ridgway vs. Hays*, 5 Cr. C. C., 23; *Brooks vs. Cook*, 8 Mass., 246; *Wallace vs. Lawyer*, 54 Ind., 501; *Jenks vs. Osceola*, 45 Iowa, 554; *Keyser vs. Rice*, 47 Md., 203; *Ellis vs. Earl Grey*, 6 Simons, 214; *Nagle vs. Stagg*, 15 Abb. Pr., N. S., 348; *Bacon's Abridgment*, tit. "Injunction," "Prerogative."

In *Phelps vs. McDonald*, 99 U. S., 307, the parties, *by consent*, put money in the hands of a receiver; and the court say (pp. 307, 308) that if it had not been thus placed in the power of the court, the judicial authority could only be exerted *in personam*. In *Clark vs. Clark*, 17 Howard, 318, the *statute* (9 Stats., 394) provided for the submission to the courts of any controversy arising as to the proper payee of a claim upon the United States, allowed under treaty stipulations with Mexico. The *statute* was *necessary* to give judicial authority. In *Milnor vs. Metz*, 16 Peters, 221, the Treasury Department refused to examine the equities of the parties, on an application to it by an assignee under the insolvent law of Pennsylvania, for the payment to him of a claim allowed by Congress to the assignor; the Department refusing to look beyond the act of Congress allowing the claim. The matter was submitted to judicial determination; and the assignee was held entitled to the money which he had applied for. The suit was in the nature of an interpleader, and the court recognized the right vested in the assignee by the operation of the insolvent law. (See 16 Op., 367; *Ridgway vs. Hays*, 5 Cranch, C. C., 23.)

The Supreme Court (*Case vs. Terrell*, 11 Wall., 202) has said, in effect, that an executive officer has no authority "to submit himself, in the exercise of duties specially confided to him by acts of Congress," to the control of the courts, "and especially of those which can assert no such jurisdiction by reason of their territorial limits;" and it holds emphatically that "he has no authority to subject the United States to such jurisdiction, and to submit the rights of the Government to litigation in any court, without some provision of law authorizing him

to do so.” (U. S. *vs.* McLemore, 4 How., 287; Hill *vs.* U. S., 9 How., 388; Nichols *vs.* U. S., 7 Wall., 122; Avery *vs.* U. S., 12 Wall., 304.)

In XV Opinions Attorneys-General, p. 525, it is said that—

“No process issued under the authority of a State government can obstruct, directly or indirectly, the operations of the Government of the United States. Therefore a contractor cannot, *dum fervet opus*, be hindered from receiving and applying to the prosecution of his *current* work the *current* payments by which the United States supply him with ability to serve them.”

It is by virtue of the general principles above stated and referred to that the salaries of public officers cannot be garnisheed by their creditors, (Hawthorn *vs.* St. Louis, 11 Mo., 59;) that executive officers cannot be interrupted in the performance of executive duties by *mandamus* or *injunction*; that the Government, in theory impeccable, cannot be sued, or its officers made parties to a creditor's bill, or be subjected to garnishee or trustee process or injunction in aid of creditors, (Broom, Leg. Max., 48–50, 57; Chitt. Prerog. Crown, 339, 340; Jenk. Cent., 78; Canterbury *vs.* A. G., 1 Phill., 306; Buron *vs.* Denman, 2 Exch., 167, 189; Feather *vs.* Reg., 6 B. & S., 257; Doe *d.* Leigh *vs.* Roe, 8 M. & W., 579; Were *vs.* Devon, 6 B. & S., 6; U. S. *vs.* McLemore, 4 How., 286; Hill *vs.* U. S., 9 How., 388; Case *vs.* Terrell, 11 Wall., 199; Avery *vs.* U. S., 12 Wall., 304; Games *vs.* Stiles, 14 Pet., 322; McElrath *vs.* McIntosh, 11 Law Rep., 399; Ridgway *vs.* Hays, 5 Cr. C. C., 23;) and that mail-carriers, contractors on public works, and other persons performing public service, cannot be prohibited by courts from receiving pay under their contracts. If, *e. g.*, a contractor engaged in carrying the mails were liable to have his work arrested by judicial interference with the compensation allowed for carrying on such service, vast public interests would suffer. (Buchanan *vs.* Alexander, 4 How., 20.)

2. It is well settled that no State authority can interfere with the operations of the National Government, or prevent its officers from executing the laws of Congress. Were it otherwise, the States, if so disposed, could seriously embarrass, if not destroy, the National Government. In the United States Bank *vs.* Halstead, 10 Wheaton, 63, the Supreme Court said: “An officer of the United States cannot, in the discharge of his duty, be governed and controlled by State laws, any farther than such laws have been adopted and sanctioned by the legislative authority of the United States. And he does not, in such case, act under the authority of the State law, but under that of the United States, which adopts such law.” (McNutt *vs.* Bland, 2 How., 17, 19; Weston *vs.* City Council of Charleston, 2 Pet., 467; Bank-Tax Case, 2 Wall., 200; The Banks *vs.* The Mayor, 7 Wall., 24; Bank *vs.*

Supervisors, *Id.*, 26; *McCulloch vs. Maryland*, 4 Wheat., 431; *Bank of Commerce vs. New York City*, 2 Black, 620; *Cooley, Const. Lim.*, 15-18, 482; *State vs. Garton*, 32 Ind., 1; *Federalist*, No. 32.) In the case of the *United States vs. Guthrie*, 17 Howard, 284, the same tribunal strongly denied the power of any court to direct the disposition of money which is in the Treasury of the United States, whatever may be the character of the individual claim thereto.

Any attempt by a State court to enjoin its citizens from receiving money or property to which they may be lawfully adjudged entitled by executive officers or other authority of the United States, would be an unwarranted interference with the powers of the National Government, under which there is ample authority "to execute the laws" and prevent interference with such execution.

A sufficient objection to the allowance of any judicial interference in the form proposed is, that it would interrupt and control the executive operations of the Government, and defeat an express requirement of a statute as to the Government bonds in question. It is not necessary to decide whether a judgment-debtor owning Government bonds can, after they are delivered to him, be required by judicial action to appropriate them in payment of debts. This case raises a different question; it requires a *transfer of title*, not merely a decision as to which of conflicting claimants is the owner of a fund.* (*Glenny vs. Langdon*, 98 U. S., 23; *Clark vs. Hackett*, 1 Cliff., 273; s. c., 1 Black, 77; *Clark vs. Clark*, 17 How., 315; *Phelps vs. McDonald*, 99 U. S., 300; *Milnor vs. Metz*, 16 Pet., 221; *Trist vs. Child*, 21 Wall., 441.)

The American courts exercise large powers by process *in personam*, by *capias ad satisfaciendum*, order of arrest, proceedings in aid of execution, and the like. (*U. S. vs. Vaughan*, 3 Binn., 394; *M'Allister vs. Marshall*, 6 Binn., 349; *Quiner vs. Marblehead Soc. Ins. Co.*, 10 Mass., 476; *Trist vs. Child*, 21 Wall., 441.)

3. There are manifest grounds of *convenience* requiring this executive independence. The judicial complications *in this case* illustrate some

* In England, provision is made by statute for such cases. (Stats. 1 and 2 Vic., c. 110, s. 14-15; 3 and 4 Vic., c. 82, s. 1; *Hulkes vs. Day*, 10 Sim., 41; *Williams, Pers. Prop.*, 162; *Dundas vs. Dutens*, 1 Ves., jr., 196, 198; *Miles vs. Presland*, 4 Myl. & Cr., 431; *Watts vs. Jeffries*, 3 Mac. & Gord., 372.) It is said that on general principles, prior to the act of 1 and 2 Victoria, c. 110, stocks were "not liable to the payment of debts in any way" during the life of the proprietor, "except under a commission or fiat in bankruptcy, or under the Insolvent Acts." (Wilkinson, *Public Funds*, 259, Lond. ed., 1839; *M'Carthy vs. Goold*, 1 Ball & B., 387, 390; *Taylor vs. Jones*, 2 Atk., 600; *Simmonds vs. Lord Kinnauld*, 4 Ves., jr., 746; *Horn vs. Horn*, Amb., 79, Blunt's edit.; *Cockrane vs. Chambers*, MS., 1825; *Id.*, 7 Law Mag., 323; *Nantes vs. Corrock*, 9 Ves., jr., 188; *Bank of England vs. Lunn*, 15 Ves., jr., 577; *Hulme vs. Tenant*, 1 Bro. C. C., 16; *Guy vs. Pearkes*, 18 Ves., jr., 197. See also *Royle's Law of Funds and Securities*, Lond. ed., 1875, p. 12; *Sir Alexander Leith's case*, 10 Ves., jr., 368; 2 *Powell on Mortgages*, by Rand, 608.)

of the difficulties that executive officers would meet in subjecting their action to the direction of the courts. The *delay* in the performance of executive duties would be a grave embarrassment to public business, and might often be ruinous to Government creditors. Among the serious consequences incident to any interference by the courts with payments from the Treasury to public officers, employés, and contractors, would be the discouragement of capable men from entering the service of the Government, and the prevention or incapacitation of such as had entered it from fulfilling their duties and contracts with promptness and efficiency. In such circumstances the cost of administering the Government would be largely augmented by the obstructions and difficulties encountered by its operations.

As Congress has not authorized any judicial interference, executive officers have no right to abdicate their powers. (Case *vs.* Terrell, 11 Wall., 199-202; Amy *vs.* Supervisors, *Id.*, 136; Farr *vs.* Thompson, *Id.*, 139; Erskine *vs.* Hohnbach, 14 *Id.*, 613.) The courts are not and cannot be invested with authority to carry on the executive operations of the Government.

4. The *act of Congress*, and the *contract* made under it in this case, require *payment to be made to the contractors*. This is the positive command of the law. Neither executive officers nor courts can disregard the law. They are subordinate to its authority, and cannot refuse obedience to its requirements. They cannot transfer the *obligation of the Government*, nor the power of executive officers to execute the law. (Draft case, *ante*, 20.)

5. It has been urged that, as the judicial proceedings attempted in relation to these bonds do not seek to make the Government or any officer thereof a party, they do not constitute a case of judicial interference with executive duties and functions.

It is the province of the courts to decide what they will do with *parties* to whom the Government is indebted, or whose property it holds in custody.

If a State court should enjoin a party from receiving money or property which an executive officer of the National Government is required to pay or deliver to him, and imprison him for contempt in receiving it, the proper courts might be called on to consider the question of his remedies.

In a case (*Ex parte* Robinson) decided by Davis, J., in the circuit court of the United States for the district of Indiana, at the May term, 1870, and reported in a note to vol. 3, Davis' Supplement to the Indiana Statutes, 364, 365, it appeared that the owner of a patent-right had been impris-

oned, under a State law of Indiana, for not observing the mode required by it of making a sale of the right. The court, in the decision on a writ of *habeas corpus* for his release, said:

"The property in inventions exists by virtue of the laws of Congress, and no State has a right to interfere with its enjoyment, or to annex conditions to the grant. If the patentee complies with the law of Congress on the subject, he has a right to go into the open market anywhere within the United States and sell his property. If this were not so, it is easy to see that a State could impose terms which would result in a prohibition of the sale of this species of property within its borders, and in this way nullify the laws of Congress, which regulate its transfer, and destroy the power conferred upon Congress by the Constitution. The law in question attempts to punish, by fine and imprisonment, a patentee for doing with his property what the National legislature has authorized him to do, and is, therefore, void. The petitioner is discharged." (South Carolina Electoral College case, 1 Hughes, C. C., 571; *Ex parte McCready*, *Id.*, 598; *McCready vs. Virginia*, 94 U. S., 391; *Ex parte Dock Bridges*, 2 Woods, C. C., 428; *In re Bull*, 4 Dillon, C. C., 323; *Helm vs. Bank*, 43 Ind., 167; 13 American Rep., 395; *Buchanan vs. Alexander*, 4 How., 20.)

Executive officers charged, as in this case, with the duty of *delivering to the contractors* the bonds to which they are entitled, are not authorized or permitted to *await*, or necessarily to *adopt*, the decision of courts. (Police case, *ante*, 64; *Com. vs. Whiteley*, 4 Wall., 522; *Nichols vs. U. S.*, 7 Wall., 122; *Gaines vs. Thompson*, *Id.*, 351; *Decatur vs. Paulding*, 14 Pet., 515.)

The law of the land does not organize antagonisms. It does not command executive officers to pay persons designated, and then authorize judicial officers to fine and imprison such persons for receiving payment. It does not organize the elements of discord and legalize "confusion worse confounded." A code which would even *permit* this, and *à fortiori* authorize it, would be appropriately labelled:

———*Nil fuit unquam*
Sic impar sibi.

It would be a code of organized injustice and oppression; it would subject officers, employés, and contractors to penalties under one jurisdiction for their performance of the duties and obligations imposed upon them by another jurisdiction—the National Government:

"Which way I fly is hell."

It is not to be supposed that any action of the court can deprive a party of a right determined in his favor by executive officers in pursuance of law; for such a supposition would imply that executive officers might, in the performance of duties imposed upon them by law, be required, either as a *duty* or from *comity*, to *adopt* the conclusion of a court; or that in the present case conflicting decisions could be lawfully

made as to the parties entitled to take the custody of the bonds—the receivers under one authority, the corporation under another; or that a court might imprison, or otherwise punish for contempt, the parties for receiving, against an injunction, the bonds which, by the decision of the proper executive officers, they are entitled to receive.

6. In the present state of the law, the manifest impossibility of giving effect to the judgment of a court shows that no court can have the jurisdiction relied on in the proceedings taken.

The Treasurer of the United States has the custody of the bonds. Neither he nor the Government can be sued or made a party in court. No provision has been made to enforce the delivery of the bonds to any party adjudged by the court entitled thereto. Where there is no power to command obedience, there can be no right to command. The bonds are registered in the name of the Treasurer. He cannot be compelled to make a transfer, because he is not and cannot be brought into court. (Milne *vs.* Moreton, 6 Binn., 361; Birmingham *vs.* Sheridan, 33 Beav., 660; Hunt *vs.* Gunn, 13 C. B. N. s., 226; Poole *vs.* Middleton, 9 W. R., 758.) The Register of the Treasury is not a party in court; yet he is the officer to make transfers on the books of the Treasury Department. He must, in making such transfers, exercise judgment, and is not, in such exercise, amenable to the courts.*

* See cases as to *mandamus*, *ante*, 232. Also, Wilkinson on Public Funds, (London, 1839,) 258; Dundas *vs.* Dutens, 1 Ves., jr., 196; McCarthy *vs.* Goold, 1 Ball & B., 387; Guy *vs.* Pearkes, 18 Ves., jr., 197; Birmingham *vs.* Sheridan, 33 Beav., 660; Hunt *vs.* Gunn, 13 C. B., N. s., 226.

In England, and in some of the American States, provision is made by statute on the subject. (U. S. *vs.* Vaughan, 3 Binn., 394; Quiner *vs.* Marblehead Soc. Ins. Co., 10 Mass., 476.)

As to specific performance of contracts for transfer, see: Royle, Law of Funds, (London, 1875,) 57; Cud *vs.* Rutter, 1 P. Williams, 570; Doloret *vs.* Rothschild, 1 S. & S., 590; Stanton *vs.* Percival, 5 H. L. C., 257; Gardener *vs.* Pullen, 2 Vernon, 394; Lightfoot *vs.* Creed, 2 Moore, 255; George *vs.* Howard, 7 Price, 646, 661; Willard's Eq., (Potter's ed.,) 363; Lord Chedworth *vs.* Edwards, 8 Ves., 46; Sallu's case, *ante*, 214, 231, 232.

In the case of Twycross *vs.* Dreyfus, 5 Law Rep., Chan. Div., 605, decided in 1877, the following is the *syllabus*:

"The plaintiff was the holder of bonds at 6 per cent. interest issued by a foreign republic through the defendants, who were their agents in *England*, by which the foreign republic, upon the national faith, pledged the general revenue of the republic, and especially the free proceeds of the guano imported by the republic into the *United Kingdom*, after the engagements contracted on them were covered, and bound itself in all the contracts which it might enter into for the sale of the guano to set aside in each half year a sum sufficient for the service of the half year, and, after such service was secured, to dispose freely of the surplus. The plaintiff brought an action on behalf of himself and all other holders of the bonds, stating in his claim that the republic had from time to time forwarded to the defendants large quantities of guano for the purpose of paying the interest on the bonds, which they refused to apply for that purpose, and threatened to apply in satisfaction of a lien claimed by themselves; and he claimed a declaration that he and the other bondholders had a claim upon the proceeds of the guano in priority to any claim by the defendants. He also alleged that the foreign republic made no claim to the proceeds of the guano, but offered to make it a party if it should so desire. The defendants demurred to the

III.—It is urged on behalf of the creditors that the executive officers should await and carry out the decision of the courts, because such officers recognize the rights of legal representatives of parties, as in the case of administrators and of assignees in bankruptcy. This recognition furnishes no analogy which affects the questions now to be decided.

The *title to property* depends upon the laws (1) of the several States, or (2) of the United States, or (3) of foreign States.

(1.) The act of Congress of September 24, 1789, now section 721 of Revised Statutes, provides that—

“The laws of the several States, except where the Constitution, treaties, or *statutes of the United States* otherwise require or provide, shall be regarded as *rules of decision* in trials of common law, in the courts of the United States, in cases where they apply.”

The laws of Congress have not determined, as *they might have done*, to whom the title of a natural person, or of a corporation in the hands of a receiver, to a claim on the Government, or in Government bonds, shall pass upon the happening of death, bankruptcy, insanity, insolvency, or dissolution. In such cases, the State law is adopted as a rule of decision, and is alike obligatory on executive officers and courts, with exceptions perhaps not now material.

(2.) In the case under consideration, the title depends upon a law of the United States, which provides for payment—*i. e.*, delivery of the bonds—to the contractors.

(3.) The title may sometimes depend on foreign laws. On the principle of comity, in proper cases, a foreign law may apply. (*Swearingen vs. Morris*, 14 Ohio St., 424; *Rorer*, Inter-State Law, 124, 206.) There are transfers *by operation of foreign law*, as by devise, intestacy, and administration, bankruptcy, &c., which are recognized and respected so far as they do not come in conflict with domestic laws or public policy. (*Lathrop vs. Drake*, 91 U. S., 516; *Glenny vs. Langdon*, 98 U. S., 24; *Shearman vs. Bingham*, 7 Nat. Bank. Reg., 493; *Phelps vs. McDonald*, 99 U. S., 298; *Clark vs. Clark*, 17 How., 315; *Milnor vs. Metz*, 16 Pet., 221; *Milne vs. Moreton*, 6 Binn., 361.)

The *authority* to decide on questions of *title*, and invest the owner

statement of claim, on the ground that the plaintiff had no charge on the proceeds of the guano, and also on the ground of want of jurisdiction and want of parties:—*Held*, (affirming the decision of *Hall*, V. C.,) that no fiduciary relation was alleged between the defendants and the plaintiff; that the guano being the property of a foreign government, the court had no jurisdiction to attach it or the proceeds of the sale thereof; and that the defendants, being agents of the foreign government, could not be sued in the absence of their principal. The demurrer was therefore allowed.” (See *Crouch vs. Credit Foncier of England*, Law Rep., 8 Q. B., 374.)

with *possession*, may be vested in executive officers, National courts, or State courts.

In this case it is shown that executive officers are charged by statute with this duty. There is no question for National or other courts to decide. In some cases controverted questions may be submitted by executive officers to the Court of Claims. (Rev. Stats., secs. 1063, 1064, 1065.)

Where *title* has been *transferred by operation of law*, and the title is dependent, as it generally is, on State laws, and it is found impossible for executive officers, charged with the duty of executing a law, to decide *who are the rightful claimants*, it has been held that such officers have the right, as incident to that duty, to submit to State courts the decision of such questions, or rather leave the parties to settle in the courts their respective rights. If a will on which rights depend is contested, executive officers will generally await a decision of the contest* by the courts. This submission to judicial authority is different in *object* and *principle* from the reference by executive officers to a court of a question arising in the performance of their duties, and not involving a question of title to property, but being an attempt to *divest a title*—to transfer it from an *acknowledged owner* to his creditor.

Executive officers may employ any lawful means to ascertain the party in whom the law has vested the *legal title*; but when the law vests a title to property in a party, and declares that executive officers shall deliver it to that party, there is no discretion left them to disregard the law and give the property to a party different from the person designated by law, merely because a court has designated such person as entitled to it. It is only in cases where the *law transfers the title* that a reference to the courts is proper; and in such cases the courts

* Crittenden, Att'y-Gen'l, 5 Op., 670; Devens, Att'y-Gen'l, 16 Op., 367; Mezes vs. Greer, 1 McAllister, 401; s. c., 24 How., 268; Glenny vs. Langdon, 98 U. S., 24; Phelps vs. McDonald, 99 U. S., 306; Clark vs. Clark, 17 How., 315; Milnor vs. Metz, 16 Pet., 221; Wilkinson on Public Funds, (London, 1839,) 20, 234; Williams on Pers. Prop., 161; Royle on Law of English and Foreign Funds, London, 1875; Sir Alex. Leith's case, 10 Ves., jr., 368.

As to injunctions to determine rights to public securities: King vs. King, 6 Ves., jr., 172; Chedworth vs. Edwards, 8 Ves., jr., 45; Osborn vs. Bank U. S., 9 Wheat., 845; Warburton vs. Hill, 5 Sim., 533; Rogers vs. Rogers, 1 Anst., 174; Stead vs. Clay, 1 Sim., 294; 2 Story Eq., 191; Small vs. Attwood, 1 Younge, 507; Stanton vs. Percival, 5 H. L. C., 257; Willard's Eq., Potters ed., 363.

As to specific performance: Royle, Law of Funds, (London, 1875,) 57; Doloret vs. Rothschild, 1 S. and S., 590.

Cases in which courts have obtained jurisdiction: 9 Op., 96; 11 Op., 117; 12 Op., 2. Executive officers might, in a proper case, when absolutely necessary, ask the Attorney-General to file a bill of interpleader to secure a determination of their rights in any court which could obtain jurisdiction of the parties. But clearly this should only be done when it would otherwise be impracticable to execute a law. The United States may file a bill of interpleader. (Vermilye vs. Adams Ex. Co., 21 Wall, 138.)

only *decide* to whom the title is transferred. (Erwin *vs.* U. S., 97 U. S., 392; Goodman *vs.* Niblack, 102 U. S., 556; Draft case, *ante*, 23.) Executive officers, having *thus* ascertained the *title*, execute *their* duties. This is very different from the demand now made, that *courts* shall be permitted by decree to *transfer title*, and thereby defeat the execution of a law.

When executive officers have delivered property as the law requires, *then* the question may arise, how far or in what form courts can exert their authority. (Phelps *vs.* McDonald, 99 U. S., 306; Clark *vs.* Clark, 17 How., 315; Milnor *vs.* Metz., 16 Pet., 221; Glenny *vs.* Langdon, 98 U. S., 24.)

A right determined by an executive officer in the exercise of his lawful authority is as conclusive as one fixed by judicial authority. It is equally *res judicata*. There may, however, be equities behind the legal rights. But *legal* rights settled in the mode prescribed by law must be deemed finally settled. (Dodge *vs.* Woolsey, 18 How., 347; 6 Op., Att'y-Gen'l Cushing, 533.)

In other classes of cases, where courts have authority to pass upon questions, jurisdiction may be exclusive in either National or State courts, or sometimes concurrent, until made exclusive in National courts. (Rev. Stats., 563, 629, 687, 711, 751, and cases cited in notes thereto; Claflin *vs.* Houseman, 93 U. S., 130; The Moses Taylor, 4 Wall., 429; Martin *vs.* Hunter's Lessee, 1 Wheat., 334; *Ex parte* McNiel, 13 Wall., 236; Bank of Bethel *vs.* Pahquioque Bank, 14 Wall., 383; Farmers' and Mechanics' National Bank *vs.* Dearing, 91 U. S., 34; Higley *vs.* Nat. Bank, 26 Ohio St., 79; Blakeney *vs.* Goode, 30 Ohio St., 350; Hade *vs.* McVay, 31 Ohio St., 237; Mersevole *vs.* Union P. C. Co., 6 Blatch. C. C., 356; Glenny *vs.* Langdon, 98 U. S., 25; U. S. *vs.* Hall, *Id.*, 356, 357; Lathrop *vs.* Drake, 91 U. S., 516.)

Congress *may* give exclusive jurisdiction over rights arising under its laws to National courts, or exclude State remedial laws, in such cases, from State courts. (Claflin *vs.* Houseman, 93 U. S., 130; Farmers' and Mechanics' National Bank *vs.* Dearing, 91 U. S., 34; Higley *vs.* Nat. Bank, 26 Ohio St., 79; Blakeney *vs.* Goode, 30 Ohio St., 350; Hade *vs.* McVay, 31 Ohio St., 237; The Moses Taylor, 4 Wall., 429; Martin *vs.* Hunter's Lessee, 1 Wheat., 334; *Ex parte* McNiel, 13 Wall., 236; Bank of Bethel *vs.* Pahquioque Bank, 14 Wall., 383; Glenny *vs.* Langdon, 98 U. S., 24; U. S. *vs.* Hall, *Id.*, 356, 357; Cadle *vs.* Tracy, 11 Blatch. C. C., 101; Cooke *vs.* State Nat. Bank, 52 N. Y., 96.)

IV.—It is urged on behalf of Baldwin & Wright that, at the dates of the several assignments and powers of attorney, the bonds could not have been made subject thereto, because the right to them was con-

tingent and *in futuro*; the right of the corporation was a claim not assignable; the assignments were not executed as the statute requires; and the corporation, by reason of the New York statute, could not make any assignment.

According to the principles already considered as applicable to this case, Baldwin & Wright have no interests of which executive officers of the National Government can take cognizance; hence, the objections, so far as they relate to the claims of this firm, cannot have force or application. The Government, however, is concerned in the questions raised by the objections; and justice forbids it to sanction an unauthorized transfer of the bonds.

The right of the corporation to the bonds was not of such a future and contingent character as to be incapable of transfer. Vested rights *ad rem* and *in re*, possibilities coupled with an interest, and future and contingent interests, are capable of alienation. (1 Parsons, Cont., 6th ed., 523; Phelps *vs.* McDonald, 99 U. S., 304; Erwin *vs.* U. S., 97 U. S., 392; Story on Sales, secs. 149, 184, 187; Trist *vs.* Child, 21 Wall., 441; Jones *vs.* Roe, 3 Term R., 88; Carleton *vs.* Leighton, 3 Meriv., 667.)

The right to the BONDS is assignable.

A "claim" upon the United States is not assignable until after the "issuing of a warrant for the payment thereof." (Rev. Stats., sec. 3477.) The subject of such assignments has given rise to much discussion. (See Circular First Comptroller, May 2, 1853; Floyd's Acceptance cases, 1 Ct. Cls., 270; Jackson's case, *Id.*, 260; Chollar's case, 2 *Ib.*, 320; Côté's case, 3 *Ib.*, 64; Adams's case, *Id.*, 312; Bates's case, 4 *Ib.*, 569; Stow's case, 5 *Ib.*, 362; Wheeler's case, *Id.*, 504; Atocha's case, 6 *Ib.*, 69; Wanless's case, *Id.*, 123; Kendall's case, 7 *Ib.*, 33; Gill's case, *Id.*, 522; Lawrence & Crowell's case, 8 *Ib.*, 252; Cavender's case, *Id.*, 281; Heathfield's case, *Id.*, 213; McCord's case, 9 *Ib.*, 156; Kendall's case, 7 Wall., 113; Trist *vs.* Child, 21 Wall., 441; U. S. *vs.* Gillis, 95 U. S., 412; Spofford *vs.* Kirk, 97 U. S., 488; Erwin *vs.* U. S., *Id.*, 397; McKnight *vs.* U. S., 98 U. S., 186.)

Assignments of *rights* which were probably not regarded as *claims* have been recognized in some cases. (1 Op., 692; 5 Op., 285; 15 Op., 236, 271; 16 Op., 191, 261; Clark *vs.* Clark, 17 How., 315; Judson *vs.* Corcoran, *Id.*, 614; Glenny *vs.* Langdon, 98 U. S., 23; Lathrop *vs.* Drake, 91 U. S., 516; Milnor *vs.* Metz, 16 Pet., 221; Phelps *vs.* McDonald, 99 U. S., 306; Mezes *vs.* Greer, 1 McAllister, 401; s. c., 24 How., 268; The Caldera cases, 15 Ct. Cls., 546; Anderson's case, 7 *Ib.*, 121; s. c., 9 Wall., 56; Bates's case, 4 Ct. Cls., 569.)

The *right* to the *bonds* now in controversy is not a "claim" within section 3477 of the Revised Statutes. There is to be no "issuing of a

warrant for the payment" of the bonds, as there must for the payment of *claims*. The *warrants* referred to in the section are for the payment of *money* out of the Treasury. (Rev. Stats., 245, 246, 247, 269, 273, 1762, 3673, 3674, 3675.) The bonds are in the Treasury, in pursuance of section 4 of the act of July 19, 1876, (19 Stats., 93.)

In the First Comptroller's circular of May 2, 1853, it is said:

"12. A *salary* account is not, strictly and correctly speaking, a *claim*; it is a demand of a higher nature, and of a more definite and certain character than a mere claim; it constitutes a *debt*. So, also, an account for any other services rendered in pursuance of law, or rendered under a contract made in pursuance of law, constitutes a *debt*, and not a mere *claim*. So, also, an account for materials, provisions, and supplies of any kind, furnished for any of the Departments of the Government in pursuance of a contract legally made, constitutes a debt of a higher nature than a mere claim."*

Soon after the decision in the case of the United States *vs.* Gillis, Mr. Justice Strong made an indorsement on this circular, as follows:

"With no authority to speak for the court, I am of opinion that the construction of the act of 1853 given in this circular, is correct. Perhaps the language of the court in United States *vs.* Gillis (95 U. S. Reports) was not sufficiently limited. It had primary reference to the case then before the court. But, certainly, the word 'claims,' as used in the act, ought not to be held to embrace liquidated debts."

It is not now intended to decide whether this circular is to be regarded as in all respects accurate. It is entitled to high consideration.

V.—The assignments and powers of attorney are not executed according to the requirements of section 3477 of the Revised Statutes for the assignments and powers therein referred to.

"Two attesting witnesses," and an acknowledgment "before an officer having authority to take acknowledgments of deeds," &c., are required by this section.

Payment under a power or assignment not duly executed might estop the assignor from asserting a claim against the Government. (Herman's Law of Estoppel, secs. 554–560; Sherman *vs.* McKeon, 38 N. Y., 275; Bank *vs.* Stevens, 1 Ohio St., 233; Sedgwick, Construction Stat. and Const. Law, 316; Potter's Dwarrior on Stats., 220, notes 27–29; Willets *vs.* Ridgway, 9 Ind., 367; Hill *vs.* Boyland, 40 Miss., 618.) The Government would not pay under such defective assignment or power. (Trist *vs.* Child, 21 Wall., 445.) The requirements of this section are absolute, and are designed to secure *proper evidence* for the protection of the Government. They should not be disregarded, for duty and policy alike require compliance with them. (Gade's case, 2 Leach, 732; s. o., 2 East, 874; Wilkinson, Pub. Funds, 149, 150.)

* See "Circular as to powers of attorney," &c., pp. 292–296, *post*.

This section does not apply strictly to assignments of, or powers of attorney in relation to, any other than *claims* for money; but the rules which it prescribes are so essential and proper that they should generally be applied in other cases of like nature.

VI.—The New York statute which controls the paving corporation did not prohibit it from making the bonds a collateral security to Safford & Co. for the loan. The transaction resulting in an advance of money was one, *in effect*, in which Safford & Co. agreed to advance money to the corporation, through Libby, Bartlett & Kimball, and receive as collateral security the prospective ten per cent. reserve fund to which the corporation might be entitled. If it be conceded that Libby & Bartlett were directors in the corporation, the contract was made, so far as the reserve fund is concerned, without “any personal interest” in either director, or certainly none in the fund which is to go to Safford & Co.

The New York Revised Statutes, vol. 2, p. 399, which relate to the duties of corporations, provide that—

“Whenever any incorporated company shall have refused the payment of any of its notes or other evidence of debt in specie or lawful money of the United States, it shall not be lawful for such company, or any of its officers, to assign or transfer any of the property or choses in action of such company to any officer or stockholder of such company, directly or indirectly, for the payment of any debt, and it shall not be lawful to make any transfer or assignment in contemplation of the insolvency of such company to any person or persons whatsoever, and every such transfer and assignment to such officer, stockholder, or other persons, or in trust for them or their benefit, shall be utterly void.”

This provision does not invalidate the claim of Safford & Co.

The statute prohibits a corporation which has “refused the payment of any of its notes” from transferring any of its property to an officer or stockholder thereof “for the payment of any debt.” This means any debt *owing to an officer or stockholder*. It was designed in such case that an officer or stockholder should not obtain a preference over general creditors. If the purpose had been in such case to prohibit a transfer to pay *any* debt to *any* person, there would have been no necessity for specifying officers and stockholders in the statute. The debt for which collateral security is in the present case provided is not a debt to an officer or stockholder, but to Safford & Co. The statute would seem to prohibit only the payment to an officer or stockholder of a debt existing prior to the refusal of the “payment of any of its notes.” If this view is correct, an officer or stockholder might, perhaps, in good faith, make a loan to the corporation and take a *collateral* to secure its repayment.

The evidence seems to show that Libby & Bartlett were neither stock-

holders nor officers at the inception of the loan and contract for collateral, and that the corporation was not then insolvent.

Safford & Co., on the evidence, are shown to have acted in good faith, without any knowledge that the corporation had "refused the payment of any of its notes," and with no suspicion of its insolvency. They are, therefore, entitled to protection as *bonâ fide* creditors. (Field on Corporations, sec. 270; Monument National Bank *vs.* Globe Works, 101 Mass., 57; Attorney-General *vs.* Insurance Co., 9 Paige, 470; Bissell *vs.* Michigan, &c., R. Co., 22 N. Y., 258; Mechanics' Banking Association *vs.* White-Lead Co., 35 N. Y., 505; City of Lexington *vs.* Butler, 14 Wall., 282; The Central Bank *vs.* Empire Stone-Dressing Co., 26 Barb., 23; Morford *vs.* Farmers' Bank, *Id.*, 568; Bridgeport City Bank *vs.* Empire Stone-Dressing Co., 30 *Ib.*, 421; The Bank of Genesee *vs.* The Patchin Bank, 3 Kern., 309; Farmers' and Mechanics' Bank *vs.* Empire Stone-Dressing Co., 5 Bosw., 275; National Bank *vs.* Matthews, 98 U. S., 625.)

If it were necessary, it would be proper to inquire whether the New York statute could control or regulate the Government of the United States in its dealings. A State cannot interfere with the operations of the National Government.

The latter is not generally within the prohibitions and limitations of any statute. (Stephani's case, *ante*, 34; Richey's case, *ante*, 103; U. S. Bank *vs.* Halstead, 10 Wheat., 63.)

The Pavement Company ought, in equity and justice, to pay Safford & Co. Common honesty requires it to do so. With the papers which will be required, if not with those already executed, the pavement corporation will be *estopped* from making any demand on the Government after its executive officers have delivered the bonds to Safford & Co. (Herman, Estoppel, secs. 320, 354; Sherman *vs.* McKeon, 38 N. Y., 275; Calanan *vs.* McOlure, 47 Barb., 206; Dezell *vs.* Odell, 3 Hill, 215.) *Nullus commodum capere potest de injuriâ suâ propriâ.* Parties and privies are equally estopped. (Herman, secs. 329, 332; McCravey *vs.* Remson, 19 Ala., 430.)

There is now presented to the First Comptroller a paper which recites the making of a contract under date of August 21, 1876; its performance; a description of the bonds due to the corporation under it; that Libbey, Bartlett & Kimball, and Safford & Co., claim to be entitled to said bonds, for the benefit of Safford & Co., as security for money advanced to said corporation; and which concludes as follows:

"Now, therefore, the undersigned, the Grahamite and Trinidad Asphalt Pavement Company, by its ———, thereunto duly authorized by the resolution of said company's board of directors, which is hereto

annexed, the said Libby, Bartlett & Kimball hereby acknowledge the right of the said James O. Safford & Co. to receive said bonds from the United States, balance in full of said contract, and the said James O. Safford & Co. hereby acknowledge the receipt of said above-named bonds from the United States in full and final payment of and for said ten per cent., and the interest thereon, so retained as aforesaid, and in full and final payment of all claims and demands under said contract.

"In witness whereof, the undersigned have hereto set their hands this 12th day of August, A. D. 1880.

"THE GRAHAMITE AND TRINIDAD ASPHALT PAVEMENT
COMPANY, by

"R. M. C. GRAHAM, *Treasurer*.

"LIBBY, BARTLETT & KIMBALL.

"JAMES O. SAFFORD & CO.

"*Attest:*

"F. F. PENDLETON."

It has no corporate seal, and is not acknowledged before any officer. It is accompanied by a resolution, duly certified under the seal of the corporation, sufficient in form to authorize the execution of the paper by the treasurer; and the resolution purports to have been adopted, as the proceedings show:

"At a meeting of trustees and directors of the Grahamite, Trinidad and Asphalt Pavement Company, held at No. 25 Wall street, New York, August 12, 1880, at 1.30 P. M., at which meeting were present: W. W. Averell, President; R. M. C. Graham, and W. H. Libby. Messrs. Bartlett and Porter being absent from the city, a quorum of the board was declared to be present."

It does not appear that this meeting was at the office of the corporation, or was a regular meeting of the directors.

This paper is tendered to the Comptroller, with a demand for the delivery of the bonds. The paper, for this purpose, is not sufficient in form. The claimants are required to produce a resolution authorizing or ratifying the paper produced as a receipt, and the several assignments and powers of attorney, at a regular meeting of a quorum of the directors at the office, or *usual place* of meeting, of the corporation; or at a special meeting, of which all the directors were duly notified, with proper evidence of the fact of notice; and the receipt and other assignments and powers should be attested by two witnesses, and acknowledged before an officer having an official seal, substantially as required by Circular No. 25, of the Treasurer of the United States, of October 22, 1878, as to powers of attorney. This acknowledgment, though not absolutely required in all cases of ordinary receipts, is deemed necessary under the circumstances. The requirement as to the action of the directors of the corporation is one which the law prescribes.

The place of meeting would not be material if all the directors were

present; but all the directors should have notice of the time and place of a special meeting, and all should have notice of the *place* of a regular meeting, when it is not to be held at the usual or regular place. (Field on Corporations, sec. 227; Warner *vs.* Mower, 11 Vt., 385; Rex *vs.* Langhorn, 4 A. & E., 538; People *vs.* Batchelor, 22 N. Y., 128; People's Mut. Ins. Co. *vs.* Wescott, 14 Gray, 440; State *vs.* Ferguson, 2 Vroom, 107; Moore *vs.* Hammond, 6 B. & C., 455; Rex *vs.* Chetwynd, 7 B. & C., 695; Wills *vs.* Murray, 4 Exch., 843.)

The corporation should make a formal assignment of the bonds, sufficient to authorize a transfer on the books of the Treasury Department, in order that the Government may be protected. In view of the papers heretofore executed, it would be unsafe, as well as unjust and unlawful, to surrender the bonds to the custody or control of the courts, even if these had jurisdiction of all the parties, which they have not. It is shown that Safford & Co. are abundantly responsible, so that courts can exercise any lawful jurisdiction after the proper executive officers have rendered their adjudication. This is the point where judicial authority begins; and it is for the courts to determine how far it can be made available in this and every proper case by a decree *in personam* to enforce by attachment the production and transfer of papers, to require an account, and the like. When the bonds are assigned and delivered in accordance with the decision of the executive authorities, an opportunity will have been afforded for interposition by any court having the requisite jurisdiction.

When the proper voucher, as stated, shall be produced, the Treasurer of the United States will be advised that with it and the order of the paving commission, under the act of July 19, 1876, he shall make to Safford & Co. an assignment of the bonds, and deliver these accordingly, if any member of that firm shall appear in person, or any attorney for the firm shall, in writing produced, be duly authorized, to receive them; or, if Safford & Co. so desire, that the bonds be transmitted at their cost to the assistant treasurer of the United States at Boston for delivery to them; the Treasurer first giving to the receivers and attorneys of Baldwin & Wright reasonable notice of the time when said bonds will be so delivered at his office or transmitted to Boston.

TREASURY DEPARTMENT,

First Comptroller's Office, December 6, 1880.

The circular of the Hon. Elisha Whittlesey, First Comptroller, (*ante*, 285, 286,) is as follows:

Circular as to Powers of Attorney, Transfers and Assignments of Claims.

TREASURY DEPARTMENT,
First Comptroller's Office, May 2, 1853.

The attention of all persons interested is invited to the following acts of Congress:

By the act of Congress, approved July 29, 1846, entitled "An act in relation to the payment of claims," it is provided: "That whenever a claim on the United States aforesaid shall hereafter have been allowed by a resolution or act of Congress, and thereby directed to be paid, the money shall not, nor shall any part thereof, be paid to any person or persons other than the claimant or claimants, his or their executor or executors, administrator or administrators, unless such person or persons shall produce to the proper disbursing officer a warrant of attorney executed by such claimant or claimants, executor or executors, administrator or administrators, after the enactment of the resolution or act allowing the claim; and every such warrant of attorney shall refer to such resolution or act, and expressly recite the amount allowed thereby, and shall be attested by two competent witnesses, and be acknowledged by the person or persons executing it before an officer having authority to take the acknowledgment of deeds, who shall certify such acknowledgment; and it shall appear by such certificate that such officer, at the time of the making of such acknowledgment, read and fully explained such warrant of attorney to the person or persons acknowledging the same."

And by the act approved February 26, 1853, entitled "An act to prevent frauds upon the Treasury of the United States," it is further provided:

SEC. 1. "That all transfers and assignments hereafter made of any claim upon the United States, or any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor; and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or any part or share thereof, shall be absolutely null and void, unless the same shall be freely made and executed in the presence of at least two attesting witnesses, after the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof."

SEC. 7. "That the provisions of this act, and of the act of July twenty-ninth, eighteen hundred and forty-six, entitled 'An act in relation to the payment of claims,' shall apply and extend to all claims against the United States, whether allowed by special acts of Congress, or arising under general laws or treaties, or in any other manner whatever."

The provisions of the above-recited acts must be strictly observed in every particular, in all cases arising under them. The following forms may be observed:

1. Whereas, by virtue of an act of Congress, [or of a resolution of Congress, as the case may be,] approved on the — day of —, in the year —, entitled, (here give the title of the act or resolution,) there has been allowed to me, A. B., the sum of — dollars and — cents, for the payment of which a warrant has been issued by the Secretary of the Treasury. Now, know all men by these presents, that I, A. B., of —, in the State of —, the claimant above referred to, do hereby make, constitute, and appoint —, of —, in the — of —, my true and lawful attorney, for me, and in my name, to collect and receive the aforesaid claim from the proper officer or officers of the Treasury of the United States, and to give proper receipts and acquittances for the same, with power to the said attorney to substitute an attorney or attorneys under him for all or any of the purposes aforesaid.

In witness of which, I have hereunto set my hand and seal, this — day of —, in the year —.

Signed, sealed, and delivered }
in the presence of— }

2. STATE OF —, }
County of —, } ss:

Be it remembered that, on the — day of —, in the year —, A. B., the person described in the foregoing instrument or power of attorney, personally came before me, the undersigned, and on said instrument being read over to him and fully explained by me, he acknowledged that he executed the same for the purpose therein stated. And I further certify, that I am an officer having authority to take the acknowledgment of deeds within said county.

3. If the acknowledgment is taken before a State or county officer not having an

official seal, his official character and signature should be attested by the certificate of a clerk of a court of record of the proper county, under his seal of office.

4. In case of an assignment of a claim, or of a part thereof, the same form of recital of the facts, and reference to the act or resolution of Congress, and the same form of attesting the assignment, may be adopted.

APPLICATION OF THE STATUTES.

5. The question arises, to what classes of cases and demands do the statutes apply?

6. The act of July 29, 1846, applies only to claims allowed by special acts or resolutions of Congress specifying the claim and the claimant, and directing the amount to be paid. The act of February 26, 1853, applies to all claims against the United States, whether allowed by special acts of Congress, or arising under general laws or treaties, or in any other manner.

7. The last statute is highly penal in many of its provisions, and therefore should be construed strictly, and the word claim must be held to have the same meaning in the first section, where it relates to transfers, assignments, powers of attorney, and orders, as in the sections which are penal. The words of the act expressly exclude it from operating upon or affecting any transfer or assignment of a claim, or of any portion thereof, prior to the approval of the act. Every draft or order, directing the payment of money to the payee or his order, if it does not state that it is to be received in trust for the drawer, is in law a transfer of the amount therein specified to the payee. Such orders and drafts drawn before the approval of said act cannot be affected by it, though they may be affected by the act of July, 1846, if they were allowed by special act or resolution. Assignments of interests in a claim contained in powers of attorney to receive the whole claim, executed before the 26th of February, 1853, will be good, if the claim do not come within the terms of the act of July 29, 1846; but no more than the amount assigned can be received under the power, if it be not executed in conformity with the requirements of those acts.

8. Powers of attorney, not containing an assignment, confer on the attorney no vested right to the fund, or any portion of it; and hence such powers executed before the approval of either of those statutes will be affected by it, if the claims to which they relate are of the character included in such statute.

9. A claim is defined in Jacob's Law Dictionary, title Claim, as follows: "Claim, a challenge of interest in anything that is in the possession of another, or at least out of a man's own possession—as claim by charter, by descent, &c. In Plowden's Com., 359, Dyer, C. J., is said to have defined claim to be a challenge of the ownership of property that one hath not in possession, but which is detained from him by wrong."

10. The same definition substantially is given in Tomlin's Law Dictionary, and in Bouvier's Law Dictionary, title Claim.

11. The word claim has been sometimes used in a vague manner, as including all personal demands; but the most general sense in which it is used, and the one that is most accurate, limits it to demands that are disputed or uncertain in their nature. A debt admitted to be due, or evidenced by a judgment, bond, promissory note, bill of exchange, or other instrument in writing, the execution and validity of which is not disputed, is of a higher nature than a mere claim. Uncertain damages arising from a tort, or from the violation of a contract, constitute a claim, not a debt. The rights of American citizens to compensation for injuries received from the French government prior to the treaty for the purchase of Louisiana are usually spoken of as French claims. So, also, the claims of American citizens for injuries received from the government of Mexico prior to the late war, which were adjudicated by commissioners, were properly called claims, and had not the certainty and essential character of debts. The claims of citizens to be indemnified for depredations committed upon them by Indians, are properly called claims, and could not with propriety be called debts. So, pensions and bounties subsequently granted to persons who have served in war, though founded on equitable considerations, yet they did not constitute legal debts, and the right to the pension or bounty granted is but a claim, and not a debt.

12. A salary account is not, strictly and correctly speaking, a claim; it is a demand of a higher nature, and of a more definite and certain character than a mere claim; it constitutes a debt. So, also, an account for any other services rendered in pursuance of law, or rendered under a contract made in pursuance of law, constitutes a debt, and not a mere claim. So, also, an account for materials, provisions, and supplies of any kind, furnished for any of the Departments of the Government in pursuance of a contract legally made, constitutes a debt of a higher nature than a mere claim. But if the party claims an extra allowance beyond what the law or the terms of the contract give him, founded on equitable considerations, such as the difficulty of the service, the alleged hardness of the contract, and the insufficiency of the compensation, the amount claimed as an extra allowance is properly a claim, and not a debt. If a

dispute arises in relation to the commencement or termination of a salary, the annual amount of which is fixed by law, and the accounting officers disallow a portion of the demand, the amount so disallowed becomes a mere claim. So in relation to other accounts; when the accounting officers act upon an account, disallow some of the items as illegal or overcharged, and allow the remainder, the items so disallowed lose the character of a debt, and become a mere claim.

13. The dividing line between debts and mere claims is observed with tolerable accuracy in prescribing the duties of committees in Congress. It is the business of the Committee of Ways and Means to bring in bills to provide for the payment of all debts due from the United States, as well as for the ordinary current expenses of the Government, and to pay all such claims as have been recognized by law; that committee has nothing to do with claims which the laws do not recognize as legal and existing. On the contrary, claims for uncertain damages, for extra compensations, for pensions, and for depredations, trespasses, and injuries, are usually referred to the Committee on Claims and other committees designated by the rules, to examine, report upon, and bring in bills for the payment of such sums as the appropriate committee may deem just.

14. It has been customary for salaried officers, contractors, and other creditors of the United States, to draw orders or drafts on the Government, which they negotiate, and thus realize the amount due them before the accounts are passed. This is often a great convenience to persons living at a distance, on the Pacific coast, or anywhere west of the Mississippi. Salaries are paid quarterly, but the account for a quarter cannot be passed until after the end of the quarter. Heretofore, drafts have been frequently drawn for a quarter's salary, or for a portion of it, and sent here before the end of the quarter; and when so received the account has been passed, and the warrant issued to the owner of the draft as the assignee of the salary. If the statute of February last should be applied to salary accounts, no such drafts could be drawn until after the end of the quarter, after the account was passed, and a warrant on the Treasurer issued for the payment thereof. The result would be that many officers would be compelled to wait from thirty to sixty days after the end of each quarter in order to receive warrants on the Treasurer, or the Treasurer's drafts, before they could realize any portion of their salary; and the delay and inconvenience to many contractors, creditors, and employes of the Government, would be still greater. I do not believe that Congress intended that the statute should be applied to any such cases.*

15. What was the evil for which the remedy was designed? A reference to the terms of those statutes, and the practice of agents in prosecuting claims before Congress, indicate the evil, and the object of the remedy. Agents were in the habit of getting general powers of attorney, to prosecute before Congress or the Departments uncertain and doubtful claims, and to obtain and receive the amount which might be allowed upon them; and in many instances assignments were obtained of large claims for very small sums from persons not knowing their rights. In such cases, unsuspecting persons were put into the hands and power of sharp and cunning agents, and shrewd, unscrupulous speculators; the claimant often had no means of protecting himself against the false representations and deceptions of agents and purchasers, and the agent might misrepresent the amount collected. Hence the requirement that the power of attorney, draft, assignment, or transfer, should refer to the statute under which the claim is allowed, and that the amount due should be ascertained, and a warrant issued for the same, before any such power of attorney, draft, transfer, or assignment, can be legally made. It is obvious that this is required by the statute in order that the claimant may fully understand the extent of his rights, and the amount allowed to him, before he can legally assign or transfer the same, or authorize any other person to receive the amount. But no such precaution is necessary in relation to salary accounts, accounts for services rendered, or supplies furnished, or for any other form of debt, about the amount of which there has never been any dispute. The officer or creditor in all such cases knows the precise amount, or very nearly the amount, due him; and no good can arise, but often very great inconvenience and evil, from imposing on him restrictions in relation to the time and mode of transferring and assigning the same, or of making powers of attorney for the receipt thereof.

SOLDIERS.

16. From various causes soldiers may not have been paid all that was due them. When the rolls are examined by the Second Auditor, the amount found due is reported to the Second Comptroller, and, if he admits it, he signs the report; and any paymaster of the army of the United States is authorized to pay the amount so found

* See *Billings vs. O'Brien*, 45 How. N. Y. Pr., 392.

and certified. Certificates of this character are frequently assigned by soldiers to avoid the loss of time and expense incident to travelling a distance to present them personally. The paymasters pay them, and include them in their accounts.

SAILORS.

17. Similar balances are found due to sailors by the Fourth Auditor, and reported to the Second Comptroller, and if he concurs, he signs the report, which authorizes a navy agent to make payment to the sailors or to their assignees. It is not known that any imposition, fraud, or extortion has been practised in any of these cases.

18. Warrants are not issued to pay these and similar balances; advances are made to the paymasters, and navy agents generally, without specifying who are to be paid.

POST-OFFICE DEPARTMENT.

19. In making payment to a contractor for transporting the mail, no warrant is issued in his name. The contractors collect of the postmasters or they draw orders on the Department, or the Department sends them drafts, according to the circumstances of the case. Collections from postmasters are generally by the carriers, on authority given by the contractors—the Department having designated the offices from which collections are to be made.

20. Orders are drawn by mail contractors to pay for expenses necessarily to be incurred in transporting the mail, and generally to obtain a credit in advance. They are lodged by the drawee or assignee with the Auditor to be paid when due, if the Department shall then be indebted to the contractor.

UNITED STATES STOCKS.

21. The stocks of the United States are owned and held throughout the civilized and commercial parts of the world. Interest is to be paid thereon by agreement, semi-annually. In almost every instance it is paid on powers of attorney. A warrant is not drawn to pay any particular person, but seasonable advances are made to the assistant treasurers, or other persons designated, to pay the interest, in different sections of the United States. Frequently powers of attorney are executed for collecting interest without any limitation as to time.

AMERICAN CONSULS.

22. American consuls are required by law, and by the directions of the Secretary of State, to relieve indigent and distressed American seamen in foreign countries. Having incurred expenses for their relief, they are instructed to draw on the Secretary of State, and to accompany the drafts by accounts and vouchers. The drafts are generally in favor of the business correspondents of the consuls in the principal cities, and may have been endorsed before they reach the State Department. If sustained by the accounts and vouchers they are paid to the holder, on the requisitions of the Secretary of State directed to the Secretary of the Treasury; and the accounts of the consuls are thereafter settled in the due course of business by the accounting officers.

23. Consuls are authorized and required by law to send destitute seamen to the United States, and they are empowered to contract with masters of American vessels to transport such seamen, at a price to be agreed upon, not to exceed ten dollars for each one. To enable the master of the vessel to obtain the payment specified, the consul gives him a certificate stating the names of the seamen placed on board, and the amount to be paid for their passage. On the arrival of the vessel in a port of the United States, the collector of the customs endorses on the certificate that such seamen have arrived. The master of the vessel, if not the owner of it, assigns the certificate to the person or persons entitled to the pay, and an account is reported by the Fifth Auditor in favor of the assignees.

24. If those statutes should be applied to the cases mentioned, and to those of like character, the business of the Government would be arrested to a great extent, to the injury of individuals, in violation of contracts, and of the public faith.

25. My conclusion is, that ordinary debts and accounts against the Government, which have been legally contracted and never disputed, are not claims within the meaning of those statutes, and that the statutes do not apply to them, but apply to uncertain damages and losses, extra allowances, pensions, equitable demands, claims for the correction of alleged errors, claims for a return or repayment of duties, items of account which have been rejected, or are disputed, and such classes of cases as are usually referred to the Committee on Claims, and to the committees other than the Committee of Ways and Means.

ELISHA WHITTLESEY.
Comptroller.

IN THE MATTER OF SEAMEN'S WAGES.—CROCKER'S CASE.

1. The limitation of *five years* in the act of June 14, 1878, (20 Stats., 130,) within which the several accounting officers of the Treasury are authorized to *receive* and consider the validity of the claims therein mentioned, runs from the *date of the act*, and not from the time when appropriations applicable to such claims were "exhausted or carried to the surplus fund."
2. The *proviso* to the fourth section of said act is a recognition of a "*regulation*" that "where a claim or account [of certain classes] against the United States has been examined, and a decision" adverse thereto has been made by the proper accounting officers, it shall not be reopened without the written direction of the Secretary of the Treasury.
3. Said section does not repeal any of the various statutes of limitation which bar the allowance of claims.
4. The act does not enlarge the jurisdiction conferred by the act of June 16, 1874, (18 Stats., 75,) but it extends the time for receiving claims under that act for five years from June 14, 1878.

December 19, 1872, Edward A. Crocker, a seaman of the American bark "R. L. Barstow," of Nantucket, was discharged at Payta, Peru, and three months' extra wages (\$60) were paid to the United States consul by the master of said vessel. (Rev. Stats., 4580.)

The expense of Crocker at the consulate was \$13, which, deducted from two months' extra wages, (\$40,) left due him a balance of \$27, which was payable to him upon his engagement on board of any vessel to return to the United States. (Rev. Stats., 4581, 4584.) Crocker left the consulate without receiving his balance, and its amount (\$27) was duly accounted for by the consul in the fiscal year which ended June 30, 1873.

This amount was carried to the surplus fund June 30, 1875, in accordance with the law.

October 19, 1880, Crocker made application to the Treasury Department for the said balance. The application has been referred to this office.

Inasmuch as more than *five years* have elapsed *since the balance due to Crocker was carried to the surplus fund*, the question arises whether it can be reported to the Speaker of the House of Representatives under section 4, act of June 14, 1878.

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

The act of Congress of June 14, 1878, (20 Stats., 130, sec. 4,) provides that—

"So much of section five of the act approved June twentieth, eighteen hundred and seventy-four, [18 Stats., 110,] as directs the Secretary

of the Treasury at the beginning of each session to report to Congress with his annual estimates any balances of appropriations for specific objects affected by said section that may need to be reappropriated, be, and hereby is, repealed. And it shall be the duty of the *several* accounting officers of the Treasury to *continue* to receive, examine, and consider the justice and validity of all claims under appropriations the balances of which have been exhausted or carried to the surplus fund under the provisions of said section that may be brought before *them within a period of five years*. And the Secretary of the Treasury shall report the amount due each claimant, at the commencement of each session, to the Speaker of the House of Representatives, who shall lay the same before Congress for consideration: *Provided*, That nothing in this act shall be construed to authorize the re-examination and payment of any claim or account which has been once examined and rejected, unless reopened in accordance with existing law.”*

The sole question presented is, whether the phrase “within a period of five years,” as applied to the authority to “receive, examine, and

* In explanation of this *proviso* it may be proper to state that there is no general “existing [statute] law” as to the reopening of claims once rejected. The proviso was inserted with reference to the following circular:

(Circular—Second Comptroller's Office.)

TREASURY DEPARTMENT, November 13, 1871.

SIR: My attention having been called to the fact that claims against the United States which have been submitted for adjudication to the Court of Claims are sometimes brought before the accounting officers of the Treasury for hearing and determination by them after such submission, I respectfully request that no such claim shall hereafter be entertained by the accounting officers, but that the same be left for the determination of the Court of Claims.

In cases where a claim or account against the United States has been examined, and a decision made thereon by the proper accounting officers, I request that no such case shall be reopened, except upon application to the Secretary of the Treasury, and by his direction in writing.

Very respectfully,

GEO. S. BOUTWELL,
Secretary of the Treasury.

Hon. JOHN M. BRODHEAD,
Second Comptroller.

(Note by the Second Comptroller.)

In cases of the second class the proper course to be observed is to make the application to the Secretary of the Treasury. If the Secretary shall in writing direct the case to be reopened, the Second Comptroller will request the Auditor (provided his examination and report have been adverse to the allowance of the claim) to cause an examination of the additional evidence and facts in the premises to be made and report the result of his examination to this office. If the former examination and report of the Auditor were in favor of the allowance of the claim, but on revision by the Second Comptroller the action of the Auditor was not concurred in by him, the Second Comptroller will himself cause the examination to be made.

J. M. BRODHEAD,
Comptroller.

TREASURY DEPARTMENT,
Second Comptroller's Office, November 14, 1871.

This circular was probably issued by virtue of the general power to “prescribe regulations.” (Rev. Stats., 161.) It does not *specifically* refer to the First Comptroller, but in *practice* it is generally applied to the accounts adjusted by him. (Wood's case, *ante*, 9; Ashton's case, *ante*, 172; 15 Op., 192.) The acquiescence in it leaves it unnecessary to consider how far such regulation may have the force of law, or how far a power once exercised is exhausted.

consider the justice and validity" of claims, means "within a period of five years" *from the date of the act*, or "within a period of five years" after the proper appropriation has "been exhausted" or the unexpended balance thereof has been "carried to the surplus fund."

If this latter construction be the correct one, then the act would be permanent in character, and would, in connection with the fifth section of the act of June 20, 1874, (18 Stats., 110,) limit the authority of the Treasury Department in the *payment* of claims (subject to exceptions named in the act) to a period of three years after an appropriation first becomes available, and would give a further period of five years in which certain claims, if remaining unpaid, should be reported to the Speaker of the House of Representatives for consideration by Congress. This construction would regard the act as creating a fixed and permanent system, and one which would have many considerations of policy and of justice in its favor. But this is not the true construction of the act, as appears from (1) its language and (2) its history.

(1.) The words which the act employs sufficiently show that it gives, for *five years from its date*, an authority to the accounting officers of the Treasury Department to receive, examine, and consider the justice and validity of certain claims. The language is plain, and admits of no construction which would result in affixing to the act the character of permanency. (Police case, *ante*, 71.)

(2.) The opinion of the Attorney-General, of September 2, 1870, (13 Op., 314,) contains a valuable review of the legislation bearing on some classes of claims.

The act of July 4, 1864, (13 Stats., 381,) authorized the examination of claims for quartermasters' supplies and commissary stores.

The act of June 16, 1874, (18 Stats., 75,) made an appropriation, in addition to others previously made, for the payment of such claims, and provided:

SEC. 2. "That all balances of appropriations, for whatever account, made for the service of the Departments of the Quartermaster General and of the Commissary General of Subsistence, prior to July first, eighteen hundred and seventy-two, which, on the thirtieth day of June, eighteen hundred and seventy-four, shall remain on the books of the Treasury, shall be carried to the surplus fund, except such as the Auditor of the Treasury whose duty it is to settle accounts against such appropriations shall certify to the Secretary of the Treasury to be necessary in the settlement of such accounts as have been reported to him for payment by the Quartermaster and the Commissary Departments pending in his office. And the Quartermaster General, Commissary General, and Third Auditor of the Treasury shall continue to receive, examine, and consider the justice and validity of such claims as shall be brought before them, under the act of July fourth, eighteen

hundred and sixty-four, and the acts amendatory thereof; and the Secretary of the Treasury shall make report of each claim allowed by them, at the commencement of each session of Congress, to the Speaker of the House of Representatives, who shall lay the same before Congress for consideration."*

Then followed the act of June 20, 1874, (18 Stats., 110, sec. 5,) which required all balances of appropriations "which shall have remained upon the books of the Treasury for two fiscal years to be carried to the surplus fund and covered into the Treasury;" and, finally, the act of June 14, 1878, (20 Stats., 130, sec. 4,) above quoted.

In a very able opinion of Hon. H. F. French, Assistant Secretary of the Treasury, of August 26, 1878, giving construction to these acts, it is said:

"The general object of this legislation was to bring back into the Treasury moneys which had been set apart for particular purposes, so that after the lapse of two years they could not be applied to such objects without a reappropriation; but, under the last clause cited, the Secretary might recommend that 'any balance of appropriations for specific objects affected by this section,' might be again appropriated.

"This reappropriation would leave a general balance that had been covered in again at the disposal of the Secretary for the objects originally intended, and it would stand for two years more liable to be applied to such object. But Congress, pursuing the general policy recommended by the present Secretary, intended to restrict even this power of expenditure by the Secretary of such reappropriations, and so repealed, in the act of 1878, the requirement of the last clause in section 5 of the act of June 20, 1874, that he should report the balances that need to be reappropriated, and intended to replace it by the remainder of said section 4 of the act of 1878.

* * * * *

"Precisely the same thing seems to be intended by section 4 of the act of 1878. Instead of receiving claims under the act of 1849, and paying them out of a general appropriation, each claim is to be received, if it be a claim within the description of the act, and presented within the term prescribed by law, to wit, by the first of January, 1876, and placed upon the list of such claims to be presented, at the commencement of the session, to the Speaker of the House, as provided for in said section.

"Before the enactment of section 4 of the act of 1878, the accounting officers were authorized to receive and allow such claims without limitation as to time, provided they came within the conditions of the act of 1849; but under the said section 4 the accounting officers are not author-

* This act is still in force, and claims are being considered and reported to the Second Comptroller under it, which are also reported to the Speaker of the House of Representatives. It is held very properly in the office of the Second Comptroller that the act of June 14, 1878, (20 Stats., 130,) is applicable to the act of June 14, 1874, (18 Stats., 75;) that is, while the act of 1878 does *not* enlarge the jurisdiction conferred by the act of 1874, it extends the time for receiving claims for five years from its date of June 14, 1878, and gives authority to examine them until finally disposed of, even beyond that period. This construction has been sanctioned by usage and appropriations made by Congress in pursuance of it.

ized, after five years from the passage of the act, to continue to receive and allow such claims.”*

In view of all this, it is clear that the proper construction of the act of June 14, 1878, is as stated.

The claim of Crocker to the balance in his favor which was carried to the surplus fund will be included in the report to be transmitted by the Secretary of the Treasury to the Speaker of the House of Representatives.

TREASURY DEPARTMENT,

First Comptroller's Office, December 7, 1880.

* In many acts authorizing the payment of claims there are *limitations* as to the time within which they may be received and paid, as in the act of March 3, 1873, (17 Stats., 500;) section 3489 of the Revised Statutes; act of June 22, 1874, (18 Stats., 193,) &c.

In the opinion of Judge French, above referred to and quoted from, he held that the 4th section of the act of June 14, 1878, (20 Stats., 130,) does not repeal “the various statutes of limitations before named.” He said:

“The manifest design of Congress was to substitute, instead of the reappropriation of balances for specific objects, the practice of allowing the claims that might before have been paid by the Secretary out of such reappropriation, to be proved before accounting officers and reported to Congress for a special appropriation, ‘and the Secretary of the Treasury shall report the amount due each claimant,’ &c.

“In this way the object of making appropriations specific would be attained. There would be no balance of an appropriation, and no reappropriation out of which the Secretary could pay any claim; but, instead thereof, the claims which had been payable out of these general funds would each be reported to Congress and considered before an appropriation to pay them would be made.

“There is nothing in section 4 of the act of 1878 which indicates an intention to remove any limitation that then existed as to the time of presenting claims. The provision that all claims may be considered by the accounting officers that may be brought before them within a period of five years, merely extends the jurisdiction of those officers through that term for the purpose of considering the class of claims then under consideration, and cannot be construed as containing a sweeping repeal of all former acts of limitation as to the time of presenting large classes of claims, such as those for horses, &c., under the act of 1849.

“This provision is in the nature of the provision extending the jurisdiction and powers of the Commissioners of Claims, which would otherwise expire by the original act creating the commission.

“The jurisdiction of the accounting officers, unless in cases specially provided for, is limited to the allowance of claims for which there is some existing appropriation.

“Certain classes of claims are specially made exceptions to this principle, as in the case of claims under the act of July 4, 1864, (vol. 13, p. 381.)

“By section 2 of the act of June 16, 1874, (vol. 18, p. 75,) it is provided that ‘the Quartermaster-General, Commissary-General, and Third Auditor of the Treasury shall continue to receive, examine,’ &c., ‘such claims as shall be brought before them under the act of July 4, 1864; and that the Secretary of the Treasury shall make report of each claim * * * to the Speaker of the House of Representatives, who shall lay the same before Congress for consideration.’

“It has never been claimed or suggested that this provision of the act of June 16, 1874, repealed the provision in the act of July 4, 1864, which limits the claims under it to loyal citizens in States not in rebellion; it merely provided, as does the act of June 14, 1878, that the balances of appropriations for the service of the departments of the Quartermaster-General and Commissary-General should be covered into the Treasury, and that each claim under the act of 1864 should be reported to Congress for an appropriation, instead of being included, as had heretofore been practised, in the appropriations for Quartermaster-General's stores and commissaries' supplies.

“The period of five years is a limitation of the power of the accounting officers to

IN THE MATTER OF SALARY FOR PLURAL OFFICES.— WADE'S CASE.

1. A collector of internal revenue, who is also a commissioner of a circuit court of the United States, and performs the duties of both offices, is entitled to the compensation authorized by law for both.
2. The act of June 20, 1874, (18 Stats., 101 and 108,) does not prohibit the holding of more than one office by the same person.

An account has been received at this office from Edward C. Wade, for his services as commissioner of the circuit court of the United States for the southern district of Georgia, from May 4, 1880, to August 7, 1880. (Rev. Stats., 627, 1983, 2025, 2026.) On the 12th of November, 1880, Mr. Wade wrote to the Attorney-General, and also to the Commissioner of Internal Revenue, asking whether, in their opinion, he had a right to receive compensation as commissioner, in view of the fact that he was holding the office of collector of internal revenue, the salary for which exceeds twenty-five hundred dollars *per annum*. Both letters have been referred to the First Comptroller. They present the question, whether an individual holding two separate and distinct offices is entitled to the compensation provided for each, when the compensation for one of them exceeds two thousand five hundred dollars *per annum*.

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

Section 1763 of the Revised Statutes declares that—

“No person who holds an office, the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duties of any other office, unless expressly authorized by law.” (See, also, secs. 1764 and 1765, R. S.)

that term, and cannot be regarded as a repeal of the limitation of the time within which claims are to be presented.

“The construction that said section 4 repeals the limitation as to the time of presenting claims is inconsistent with the well-known principles of law which govern this subject. If Congress had intended to enlarge for five years the time in which all claims under appropriations, the balances of which had been exhausted or carried to the surplus fund, might be presented, and thus to repeal the limitation for presentment of claims which attaches to nearly all appropriations by Congress, we should surely find in the statute some express provision for the repeal of such limitation, but we do not find any or even a general clause repealing all provisions of former statutes inconsistent with this act.

“It is a well-settled principle of law that a statute is not repealed by implication, unless there be such a positive repugnancy between the provisions of the new law and the old that they cannot stand together or be consistently reconciled. (Potter's Darrison Statutes, page 155, note 4; McCool vs. Smith, 1 Black's U. S. Rep., page 470.)

“Section 4 of the act of June 14, 1878, is clearly inconsistent with the limitation as to the time of the presentment of claims in the act of 1849, for the payment of horses, &c., and with the provisions of section 3489, Revised Statutes, that no claims for collecting and drilling volunteers, &c., shall be paid, unless presented before the 30th of June, 1874.”

The construction heretofore given to this section, when taken in connection with the various provisions of law on the same subject-matter, is that "It does not prohibit the holding of more than one office, with the salary of each." (Herndon's case, *ante*, 48; 15 Op. Att'ys-Gen., 307, 308; 16 Op., 7, 8.)

In the case of Talbot, who sued in the Court of Claims to recover salary, at the rate of \$2,000 per annum, for performing the duties of a clerkship in the Attorney-General's office, from August 12 to September 30, 1868, in addition to the duties of a clerkship in the Treasury Department, for which he had been paid a regular salary, the court held that he was not entitled to recover; payment being prohibited by the *proviso* in sec. 1, act of September 30, 1850, as follows:

"That hereafter the proper accounting officers of the treasury, or other pay officers of the United States, shall in no case allow any [*and*] pay to one individual the salaries of two different offices on account of having performed the duties thereof at the same time. (9 Stats. at Large, 542; Talbot's case, 10 Ct. Cls., 428.)

But this *proviso* is not carried into the Revised Statutes. In the case of *Converse vs. The United States*, which is the leading case on all questions of additional compensation, the *proviso* was referred to by date, but the court did not treat it as standing alone, nor consider it as precluding an allowance to a collector of customs for services performed outside of the line of his regular duties, pursuant to the lawful order of the Secretary of the Treasury. (21 How., 463; 6 Op., 80.)

In an opinion given June 11, 1877, the Attorney-General said:

"Sections 1763, 1764, and 1765 of the Revised Statutes forbid any person who holds an office, the salary or annual compensation of which amounts to the sum of \$2,500, to receive compensation for discharging the duties of any other office, unless expressly authorized by law; they also direct that no allowance or compensation shall be allowed to any officer or clerk by reason of the discharge of duties which belong to any other officer or clerk in the same or any other Department, and that no officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.

"The construction which has been given to these statutes (especially in the case of *Converse vs. The United States*, 21 How., 463) is, that the intent and effect of them is to forbid officers holding one office to receive compensation for the discharge of duties belonging to another, or additional pay, extra allowance, or compensation for such other services or duties where they hold the commission of but a single office, and by virtue of that office, or in addition to the duties of that office, have assigned to them the duties of another office. According

to that decision, however, if an officer holds two distinct commissions, and thus two distinct offices, he may receive the salary for each." (15 Op., 307; see 16 Op., 7; Collins's case, 15 Ct. Cls., 22.)

Certain officers are prohibited by law from exercising the duties of circuit court commissioner. Section 628, Revised Statutes, declares that "no marshal or deputy marshal of any of the courts of the United States shall hold or exercise the duties of commissioner of any of the said courts;" but collectors of internal revenue are not so prohibited.

This section, as well as the laws against plurality of offices in specified cases, and some other provisions, recognize the right to dual compensation in such cases as Mr. Wade's. (Rev. Stats., 177, 178, 179, 182, 1222, 1223, 1224, 2062, 2063, 3144, 3150.)

The general policy of the Government is adverse to the allowance of double or additional compensation to any person; but the laws now in force have not been so drawn as to prevent, effectually, such an allowance in all cases. For more than twenty-five years it has been the practice of the United States circuit courts to appoint as commissioners such clerks of the United States courts as have applied for appointment; and, in some cases, the net emoluments of clerks, who are also commissioners, have exceeded \$2,500 a year; but this fact has not precluded payment of commissioners' fees to these clerks.

The act of June 20, 1874, (18 Stats., 109, sec. 3, *proviso*,) was not designed to prohibit the holding of a plurality of offices.

The annual compensation of collectors of internal revenue is fixed by law and regulation. (Rev. Stats., 3145.) The compensation of commissioners of the United States circuit courts consists of fees which are prescribed by law. (*Id.*, 847.) Appropriations are made annually for payment of the compensation of such collectors and commissioners. The duties of these officers are separate and distinct, and not incompatible with each other. (Rev. Stats., Title XXXV; secs. 727, 728, 846, 847, 856, 945, 981, 984, 1014, 1042, 1070, 1080, 1778, 1982, 1983, 1984, 1986, 1987, 2025, 2026, 3462, 4080, 4081, 4546, 4547, 5003, 5076, 5270, 5271, 5280, and 5296.)

A person appointed to the office of collector of internal revenue, and *also* to the office of commissioner of a circuit court, who performs all the duties required of him in both offices, is entitled to the compensation which is expressly authorized by law for the discharge of the duties pertaining to each office, whether the compensation in either of them exceeds \$2,500 per annum or not.

The First Auditor will accordingly state an account in favor of the claimant, Wade.

TREASURY DEPARTMENT,

First Comptroller's Office, December 9, 1880.

IN THE MATTER OF APPLYING THE APPROPRIATION FOR THE CONTINGENT EXPENSES OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA.—CLERK'S CASE.

1. Under the act of March 3, 1879, (20 Stats., 403, 407, 410,) appropriations for miscellaneous and "general contingent expenses of the government of the District of Columbia" cannot be applied in paying for services of clerks, writers, or messengers.
2. Section 3682 of the Revised Statutes is applicable to appropriations for contingent, incidental, and miscellaneous purposes under the government of the District of Columbia.
3. Appropriations for contingent expenses in the Departments of the Government cannot, as a general rule, be applied in paying for official or clerical compensation.

On the 31st of October, 1880, the First Auditor requested the First Comptroller to decide whether credit for payments to persons employed as *clerks, writers, and messengers*, made out of the appropriation "for general contingent expenses of the government of the District of Columbia," (20 Stats., 410,) could be allowed in the settlement of the accounts of the Commissioners of the District for the fiscal year ending June 30, 1880.

DECISION' BY WILLIAM LAWRENCE, *First Comptroller*:

The act of Congress of June 11, 1878, (20 Stats., 102,) providing a permanent form of government for the District of Columbia, authorized the Commissioners appointed thereunder to abolish any office, to consolidate two or more offices, *reduce* the number of employes, remove from office, and make appointments to any office under them authorized by law; but it nowhere authorizes them to employ or pay clerks, writers, or messengers in *addition* to the force appropriated for in the various District offices. The act provides that the Commissioners shall prepare annual estimates containing an itemized statement of the amount necessary to defray the expenses of the government of the District of Columbia for the next ensuing fiscal year, which estimates shall be submitted to the Secretary of the Treasury and acted upon by him after which they shall be transmitted to Congress. The act expressly prohibits the Commissioners from making any contract or incurring any obligations other than such as are therein provided for, and which shall be approved by Congress.

All disbursements are to be regulated and limited by the appropriations made by Congress, and no discretion is left with the Commissioners

as to the purposes for which the money specifically appropriated shall be disbursed.

The 'Sundry Civil Act' of March 3, 1879, (20 Stats., 410,) appropriated "for general contingent expenses of the government of the District of Columbia," for the fiscal year ending June 30, 1880, \$20,000.

Appropriations were made under preceding heads for *clerks, messengers, &c.*, in the various offices of the District government, as also for *contingent expenses immediately connected with those offices*.

If Congress had intended that any part of the appropriation for general contingent expenses should be available for clerical or official compensation, it would have expressed such intention in the act.

Section 3682 of the Revised Statutes declares that "no moneys appropriated for contingent, incidental, or miscellaneous purposes shall be expended or paid for official or *clerical* compensation."

That this provision is applicable to the Commissioners of the District, and to the services of clerks, &c., under their control, seems to be sufficiently clear. It is taken from the act of July 12, 1876, (16 Stats., 250, sec. 3,) but it is *general* in its terms, objects, and scope, and applies to all appropriations, present and prospective. (*Mahony vs. United States*, 3 Ct. Cls., 152; s. c., *nom. Mahoney vs. United States*, 10 Wall., 62; *Gage vs. Currier*, 4 Pick., 399; *Decatur vs. Paulding*, 14 Pet., 511.) Its language is broad and comprehensive, and, like all general provisions, is to be construed as including all cases to which its language can fairly apply, on the maxim *Generalis regula generaliter est intelligenda*. (6 Rep., 65.) It applies to *all* moneys appropriated for contingent expenses. It is equally applicable whether the Commissioners and clerks are to be regarded as officers of the United States or not.

In *Cox vs. United States*, 14 Ct. Cls., 513, it was held that "the office of a member of the board of health for the District of Columbia, although in one sense a municipal office, was yet an office under the general government."

The money appropriated for contingent expenses cannot be paid for compensation of clerks under the name of *writers*. Section 3682 applies to "clerical compensation." It is possible that there may be *writers* who are not included in the general term clerks. A writer possessing very little clerical capacity might be employed for his skill in composing. But in the absence of evidence that the word *writers*, in the accounts rendered by the Commissioners of the District, does not mean clerks, it will be held to be included in the latter designation.

The appropriation for contingent expenses, as made in the act of March 3, 1879, cannot be applied in paying compensation to clerks

That act specifically appropriates money to pay clerks in the several branches of the service under the Commissioners of the District, and fixes their number. It is manifest that the act provides for all the clerks which Congress intended should be employed. If more clerks be needed, Congress alone can supply the want. When Congress has specifically provided for the employment and payment of a fixed number of clerks, this provision is equivalent to a declaration that no more shall be employed: *Expressio unius est exclusio alterius*. (Birch's case, *ante*, 154.)

All payments for clerical or other official compensation, out of appropriations for contingent or miscellaneous expenses, must, in the settlement of the accounts of the Commissioners of the District of Columbia, be disallowed; and the First Auditor will be governed by this decision in stating the accounts submitted by the Commissioners of the District for the fiscal year which ended June 30, 1880.

TREASURY DEPARTMENT,

First Comptroller's Office, December 10, 1880.

IN THE MATTER OF COMPENSATION FOR SERVICES IN PREPARING AND SUPERINTENDING THE PRINTING OF DECISIONS OF THE COURT OF CLAIMS.—REPORTER'S CASE.

1. Under the acts of June 20, 1874, (18 Stats., 109, sec. 3,) and June 15, 1880, (21 Stats., 237,) and section 1765 of the Revised Statutes, officers of the Court of Claims, whose salaries are fixed by law, cannot receive compensation in addition thereto for services in preparing and superintending the printing of the fifteenth volume of the Reports of said court.
2. Example of an application of the rule that repeals by implication are not favored.
3. Appropriation acts are not to be deemed as engrafting exceptions on general laws, unless such intention is made reasonably certain.

Hon. Charles C. Nott has been a judge of the Court of Claims since February, 1865, in the receipt of an annual salary of \$4,500.

Mr. Archibald Hopkins has been the clerk of that court since January, 1873, in the receipt of an annual salary of \$3,000.

The act of June 15, 1880, "making appropriations for the legislative, executive, and judicial expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and eighty-one, and for other purposes," (21 Stats., 210, 237,) appropriated for the Court of Claims:

"* * * For reporting the decisions of the court, clerical hire, labor in preparing and superintending the printing of the fifteenth
H. Ex. Doc. 81—21

volume of the Reports of the Court of Claims, to be paid on the order of the court, one thousand dollars."

On an "accountable requisition" of November 23, 1880, Mr. Hopkins, as a bonded disbursing officer, by force of the act of August 6, 1856, (11 Stats., 30, sec. 3; Rev. Stats., 1056,) received Treasury draft No. 11983, on warrant No. 2863, for \$1,000, under this appropriation.

December 7, 1880, an order was made by the Court of Claims—

"That the clerk of the court pay to Charles C. Nott and Archibald Hopkins, reporters of the court, the sum of one thousand dollars, for reporting the decisions of the court, clerical hire and labor in preparing and superintending the printing of the fifteenth volume of the Reports of the court, being the amount appropriated by the act of June 15, 1880."

December 8, 1880, Mr. Hopkins presented to the First Auditor an account, as follows:

"THE UNITED STATES, in account with ARCHIBALD HOPKINS, Chief Clerk Court of Claims, on account reporting decisions, &c., Court of Claims.

FISCAL YEAR 1881.	
DR.	CR.
1880. To reporting decisions, &c., 15th vol. Court of Claims Reports.....	By Treasury draft No. 11983, on warrant No. 2863.
\$1,000 00	\$1,000 00
<u>1,000 00</u>	<u>1,000 00</u>

“ ARCHIBALD HOPKINS,
“ Chief Clerk Court of Claims.” *

* If this account had been allowed, the form of adjustment would have been as follows:

No. ____.
Recorded ____.

TREASURY DEPARTMENT,
First Auditor's Office, ____, 18__.

I hereby certify, that I have examined and adjusted an account between the United States and Archibald Hopkins, chief clerk of the Court of Claims, on account of reporting decisions, &c., for 1881, and find that he is chargeable, viz:

To warrant on the Treasurer, viz:	
No. 2863, dated November 29, 1880.....	\$1,000 00
	<u>1,000 00</u>

I also find that he is entitled to credit—	
By amount of his disbursements for fiscal year 1881.....	\$1,000 00
	<u>1,000 00</u>

as appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

\$—
_____, First Auditor.
To the FIRST COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.
I admit and certify the above adjustment, this ____ day of ____.
_____, Comptroller.
To the REGISTER OF THE TREASURY.

It appears that the services for which credit is asked were rendered by Judge Nott and Chief Clerk Hopkins.

December 11, 1880, the First Auditor, Hon. R. M. Reynolds, addressed a letter to the First Comptroller, saying:

"I am clearly of opinion that no payment can be made to the officers named in this account. * * *

"Section 1763, Revised Statutes, forbids compensation to any person holding an office, whose salary or compensation amounts to \$2,500 *per annum*, for discharging the duties of any other office, unless *expressly authorized by law*.

"Section 1764 forbids the payment for extra services of any kind whatever, or for discharging the duties belonging to any other officer or clerk in the same or any other Department, unless expressly authorized by law.

"Section 1765 is, in my judgment, conclusive upon the question involved in this claim. It provides that 'no officer in *any* branch of the public service, or *any other person*, whose salary, pay, or emoluments are fixed by law or regulations shall receive any additional pay, extra allowance, or compensation, *in any form* whatever, for the disbursement of public money, or *for any other* service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.'

"It is the opinion of this office that the words in sections 1763 and 1764, 'unless expressly authorized by law,' mean that the statute must not only authorize the work to be done for which payment is to be made, but it must also direct payment to be made to the proper persons by name, when they are on the list of prohibited officials or employés of the Government.

"To give these sections any other construction will permit evasion of these statutes, and open the door to continued violations of these restrictive laws, as it will be found that all that is necessary to evade them is to get an appropriation for work to be executed, and then * * * divide the amount appropriated among officers and employés, which at once becomes extra compensation, or increase of salaries already fixed by law.

"The language of section 1765 is, however, absolutely conclusive as to the intent of Congress, when it declares that no payment should be made in such cases, *unless* 'expressly authorized by law, and the appropriation therefor explicitly states that *it is for such additional pay, extra allowance, or compensation.*'

* * * * *

"It is proper to say these officers have been paid for volumes 8, 9, 10, 11, 12, 13, and 14, under like appropriations, and this office has stated the account in each case. * * * The only color of authority in the act of appropriation is in the following words: 'To be paid on the order of the court;' but the question still arises whether or not the honorable court has authority, under these restrictive statutes, to distribute the \$1,000 *to its own members*, who are on the list of officials prohibited from receiving extra pay, &c., unless expressly authorized by law."

Archibald Hopkins submitted an argument, an abstract of which is as follows:

1. It is submitted that the case of the reporters of the Court of Claims

is taken out of the statute [Rev. Stats., 1765] by other legislation of Congress; that it is necessarily *sui generis*, and will form no precedent for other cases.

2. This case comes within the decision of the Supreme Court in *U. S. vs. Alexander*, 12 Wall. R., 179, where the court says:

"Whatever might be our opinion respecting the construction of the statute were the matter *res nova*, we cannot regard the question as an open one," for the reason that the statute soon after its passage had received a construction from the proper executive officer which Congress had left undisturbed in subsequent kindred legislation. In the case of the reporters of the Court of Claims, Congress legislated first in 1871, (16 Stat. L., 480.) The Comptroller of the Treasury approved the payment of it; and Congress continued annually, from 1871 to 1880, to *make the same appropriation in precisely the same language, and the money continued annually to be paid over to precisely the same officers.*

To the same effect is the recent decision of the Supreme Court in the *U. S. vs. Pugh*, (99 U. S. R., 269,) where the court says:

"While, therefore, the question (of the construction to be given to the statute) is by no means free from doubt, we are not inclined to interfere at this late day with a rule which has been acted upon by the Court of Claims and the Executive for so long a time."

If the case of the reporters should be carried to the Supreme Court, it is manifest, in the light of these decisions, that the Court would say something like this:

"These appropriation acts are in *pari materia*, and are to be read together. The Court of Claims, charged with the administration of the law and of the fund, construed the first, in 1871, to be properly payable to the then-existing reporters of the court, for whose benefit the appropriation was doubtless intended. The Comptroller of the Treasury evidently coincided in that view of the case, and passed the disbursing officer's—*i. e.*, the clerk's—account. Congress, it must be presumed, were aware that the reporters of the court remained unchanged, and they regarded their reports as of sufficient merit to be continued, and they made, and have ever since continued to make, annual appropriations to secure their publication. After such continuous and repeated recognition by Congress, and such unbroken action by the Court of Claims and the accounting officers of the Treasury, the matter manifestly is not *res nova*, and the construction which has been practically given to the appropriation acts should not be disturbed."

3. Congress, having employed precisely the same language for precisely the same purpose through a series of appropriation acts, from 1871 (16 Stat. L., 480) to 21 *Id.*, the last act is to be construed as the first would have been; so holds the Supreme Court in the light of the circumstances then existing. (Land-Grant R. R. cases, 93 U. S. R., 442.)

What were the controlling circumstances with which Congress dealt in 1871?

If there had been no previous Court of Claims Reports, or if Congress had legislated generally for reports, or if the reports were anonymous, a very different question of legislative intent would exist. What were the facts?

The reporters of the court had published five volumes of reports gratuitously—*i. e.*, without help from Congress. They represented the facts to Congress, and Congress came to their aid. The next ensuing volume of *their reports* would be the sixth; Congress appropriated for

it *specifically*. When Congress began with the sixth* volume by name, they recognized the fact that five had already been published. The appropriation for the sixth volume referred to the sixth volume of a series of Court of Claims Reports then existing, then in course of publication—viz., Nott & Huntington's Court of Claims Reports. The purpose of the appropriation was to keep up that series of reports.

Congress, by the appropriation, intended to aid the reporters, and not to injure them; to keep their work alive, and not to destroy it; to help the court, and not to embarrass it.

To construe the appropriation differently would be to ascribe one of two absurd intents to Congress—to hold that Congress intended to destroy Nott & Huntington's work of authorship by inducing the court to appoint other reporters to carry on Nott & Huntington's series of Court of Claims Reports, or to hold that Congress intended to make an appropriation which should never be used, which Nott & Huntington could not receive because they were officers of the court, and which nobody else could receive, because the court preferred to continue these established series of reports.

That Congress intended neither of these absurdities is made clear by the fact that Nott & Huntington, and nobody else, continued to act as reporters of the court, and that Congress continued to appropriate annually, volume by volume, for their series of reports, just as they came out, *pari passu*.

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

In this case the services rendered by the claimants are "authorized by law," as section 1765 of the Revised Statutes requires; but the appropriation act, to which reference has been made, does *not*, as that section requires, when taken in connection with section 3 of the act of June 20, 1874, (18 Stats., 109,) "explicitly state" that the appropriation is "for *such* additional pay, extra allowance, or compensation," in favor of the officers who are claimants, or of *any officer*.

The appropriation is for payment for this *service*; but not for this service by these or any *officers*. It would be competent for Congress to authorize the payment of extra compensation to be made to *officers*, without specifically naming them; but, if not named, they can only be paid for such services when the law, in terms or by necessary inference, intended to make such payment to *officers*.

There is nothing in the appropriation act to indicate any such intention. An appropriation act which would authorize payment for such services to an officer would, to that extent, repeal or modify section 1765 of the Revised Statutes, and the act of June 20, 1874, (18 Stats., 101, 109,) or, at least, except a particular service from the operation of the provisions referred to. As repeals by implication are not favored, so exceptions by inference can only arise where it is at least reasonably clear that it was the purpose of Congress to make such exceptions.

* See note *infra*, page 316.

The fact that the law declares that this appropriation is "to be paid on the order of the court," does not aid the claimants. This is not a repeal, to any extent whatever, of section 1765, or of the act of 1874. Its purpose is to secure the approval of a court distinguished for its learning, and with a capacity to judge whether the labor of "preparing and superintending" the volume of Reports had been so performed as to merit the authorized compensation. If the court can make the order in favor of one judge and the clerk, it can equally make it in favor of all the judges, who would thus pass on the merits of their own work, and decide a claim in their own favor. It was not the purpose of the act to render such a scandal possible.

The authority given to the court to make an "order" is not a repeal or limitation in any sense, for any purpose, of section 1765 of the Revised Statutes. There is no word in the law showing a purpose to repeal or limit it. No rule of public policy requires such a construction of the appropriation act as would have that effect; and executive officers would not be justified in holding that Congress intended to produce the result stated, unless the language of the law clearly so required, which it does not.

In the very appropriation act under consideration, and just preceding the appropriation made for the Court of Claims, Congress has unmistakably signified its approval of the principles of construction here insisted upon; for, as will be seen below, it has there expressly excepted from the operation of section 1765 an appropriation which would otherwise have been obnoxious to the provision of that section:

"* * * The Attorney-General is hereby authorized to expend the one thousand dollars appropriated by section one of the act of March third, eighteen hundred and seventy-nine, chapter one hundred and eighty-two, [20 Stats., 398,] 'to pay for the editing and preparing for publication and the superintending of the printing of the fifteenth volume of the Opinions of the Attorneys-General,' in such manner, *notwithstanding section seventeen hundred and sixty-five, Revised Statutes*, as will enable him to meet the expense of editing and preparing for publication the fifteenth and sixteenth volumes of the Opinions of the Attorneys-General, and superintending the printing thereof." (21 Stats., 236.)

The act of May 1, 1876, (19 Stats., 45, *proviso*,) is a similar legislative construction of section 1765; as the provision in the act of March 3, 1879, (20 Stats., 384,) allowing additional compensation to the clerks employed in the Treasury Department upon the refunding of the national debt, is also of section 170, Revised Statutes, which is identical in principle with section 1765.

A legislative construction by Congress, largely composed, as that body always has been and should be, of lawyers ranking among the

ablest in the country, commands great weight. (*Rex vs. Loxdale*, 1 Burr., 447; *Contant vs. The People*, 11 Wend., 511; Sedgwick, Stat., 2d ed., 214.) The special provision in the appropriation act now in question is controlled by the general one in the Revised Statutes, section 1765, and by the act of 1874: *Generalis regula generaliter est intelligenda*. (6 Rep., 65; *Converse vs. United States*, 21 How., 471; *Decatur vs. Paulding*, 14 Pet., 511; *Gage vs. Currier*, 4 Pick., 399; *Mahony vs. United States*, 3 Ct. Cls., 152; s. c., *nom. Mahoney vs. United States*, 10 Wall., 62; Audit case, *ante*, 37–41.)

The same result is deducible by analogy from maxims: *Ubi lex est specialis et ratio ejus generalis, generaliter accipienda est*, (Potter's Dwaris on Statutes, 187;) *Generalia verba sunt generaliter intelligenda*, (Broom, Leg. Max., 647.)

The effect of the decision in *Converse vs. United States*, 21 Howard, 473, is, that an officer can receive no compensation beyond his *salary*, unless (1) the services for which he claims it are authorized by law, and (2) the remuneration for them is fixed in *amount* by law. In this case the sum to be paid to the claimants is not fixed by law. The appropriation, it is true, is in amount \$1,000. This only fixes the maximum which can be paid, but does not require payment of the whole sum. The amount to be paid is left to the discretion of the court.

The claim here is by two officers. The law does not fix the amount each shall have. This is left to the discretion of the court. The law does not require the whole appropriation to be paid to one or two parties. The sum appropriated is for [1] "clerical hire, labor in [2] preparing and [3] superintending the printing" of a volume of Reports. The work might have been, in the discretion of the court, distributed to three or more persons, and the compensation of each fixed in the exercise of a like discretion.

There has been no *usage* as to the reporting of the decisions of the court which *permits*, much less requires, a different construction. Though usage is admitted as an element of construction, it is decisive "only as it is the interpreter of a *doubtful* law; for, as against a plain statutory law, no *usage* is of any avail." (Broom, Leg. Max., 684, 917; *Magistrates of Dunbar vs. Duchess of Roxburghe*, 3 Cl. & Fin., 354; 13 M. & W., 411; *Pochin vs. Duncombe*, 1 H. & N., 856; *Fermoy Peerage Case*, 5 H. L. Cas., 716; *Gwyn vs. Hardwicke*, 1 H. & N., 53; *Gorham vs. Bishop of Exeter*, 15 Q. B., 73, 74.)

Here the statutes are not doubtful. The maxim, *Optimus interpret rerum usus*, (Broom, Leg. Max., 917, 922; Sedgwick, Stat., 215,) is applicable only when the usage is certain, reasonable, long continued, and without interruption. The instances in which accounts similar to that

in question have been allowed by the accounting officers are not so frequent as to have acquired the force and authority of a binding usage, nor so *long-continued* as to be available in opposition to the language of the statute.

"A *particular* usage cannot be admitted to interpret a general act." (King *vs.* Hogg, 1 T. R., 721; *s. c.*, Cald., 266; Noble *vs.* Durell, 3 T. R., 271; Hokin *vs.* Cooke, 4 T. R., 314; King *vs.* Major, *Id.*, 750; Master, &c., of St. Cross *vs.* Lord Howard de Walden, &c., 6 T. R., 338; Paull *vs.* Lewis, 4 Watts, 402.)

Besides, the practice in a *particular case*, especially for a brief period as here, cannot, without pertinent reasons, overrule a general and long-continued usage and construction prevailing in all cases similar in principle. Congress is presumed to know a general usage sufficiently continuous, but not an isolated special practice. (Broom, Leg. Max., 927.)

In Lawson *vs.* United States (14 Ct. Cls., 332) it appeared that a certain construction of an act of Congress had prevailed for nearly ten years, yet the Court of Claims held it wrong, and that too in favor of a claimant who had officially acquiesced in and acted on it during the whole time.

In the Floyd Acceptance case (1 Ct. Cls., 270, 291) the same court decided that an illegal practice prevailing among officers of the Government, "*no matter how long continued or extensive, can never ripen into usage.*" (See same case, 7 Wall., 666; Hancox et al. *vs.* United States, 9 Ct. Cls., 400; *Ex parte* Duncan N. Hennen, 13 Pet., 230.)

The act of June 20, 1874, (18 Stats., 109,) provides—

"SEC. 3. That no civil officer of the Government shall hereafter receive any compensation or perquisites, directly or indirectly, from the treasury or property of the United States beyond his salary or compensation allowed by law: *Provided*, That this shall not be construed to prevent the employment and payment by the Department of Justice of district attorneys as now allowed by law for the performance of services not covered by their salaries or fees."

The immediate occasion which gave rise to this provision was the occupancy by an officer and his family of a part of one of the Government buildings with which his service was connected. This incident served to call attention to what Congress deemed an unauthorized mode of securing compensation in addition to salary, and the provision quoted was made for all cases; it is a general provision, and is to be given a general application. It is so comprehensive in its terms that no civil officer can receive compensation beyond his salary, whether for regular or extra services connected with his office or

otherwise, unless some law or appropriation shall provide payment to him therefor. Congress can, at any time, except a case from the operation of the prohibition contained in the provision.

The last clause of section 1765 of the Revised Statutes, reserving to Congress the right to make an exception from its provisions, was unnecessary; but it is important and significant as an emphatic rule for the future construction of appropriation laws. Under this section there are two conditions requisite to enable a salaried officer to secure "additional pay, extra allowance, or compensation" for "any * * * service * * * whatever," official or unofficial, to wit: (1) that the service "is authorized by law," and (2) that "the appropriation therefor *explicitly* states that it is for such additional pay, extra allowance, or compensation." By force of the act of June 20, 1874, it must appear also that extra compensation to a civil officer was expressly provided for by Congress. This provision was evidently designed to meet and prevent evasions, which seem to have become somewhat numerous, of sections 1763, 1764, and 1765 of the Revised Statutes; but it left all these sections in full force, and is virtually a reiteration of the prohibitions which they embrace. It is to be construed in the light of this purpose.

It follows closely, in the same act, the appropriation for reporting the decisions of the Court of Claims, and is, in effect, an explicit declaration that no officer of that court "shall *hereafter* receive any compensation or perquisites, directly or indirectly, from the treasury * * * of the United States, beyond his salary," for any purpose whatever.

It prohibits payment to any civil officer beyond his "salary or compensation allowed by law"—that is, an officer paid by *salary* shall receive nothing additional, and one paid "compensation allowed by law" in any other form than salary is subject to a like limitation.

There is nothing in this prohibitory provision showing a purpose to *restrain* its operation to extra official services, or to make it inapplicable to services not connected with those of an office. General words may be controlled or limited in accordance with the maxim, *Verba generalia restringuntur ad habilitatem rei vel personam*. (Broom, Leg. Max., 646.) In order to such control or limitation, however, there must be something in the law itself to qualify them. There is nothing in this law to serve such a purpose; on the contrary, as if to "make assurance double sure," it is expressly declared in the same act that—

"Hereafter it shall be unlawful to allow or pay to any of the persons designated in this act any additional compensation from any source whatever." (18 Stats., 101.)

The judges and clerk of the Court of Claims are "designated in this act." "The office of a good expositor of an act of Parliament is," says Lord Coke—and the principle is equally applicable to an act of Congress—"to make construction upon all the parts together, and not of one part only by itself." (Lincoln College case, 3 Rep., 58; 2 And., 31.)

The decisions of the Court of Claims, the learning and ability of whose judges have been so justly and universally recognized, have themselves rendered the conclusion now reached all the more satisfactory. (Stansbury *vs.* U. S., 1 Ct. Cls., 123; Wilson *vs.* U. S., 1 Ct. Cls., 206; Jackson *vs.* U. S., 8 Ct. Cls., 354; Talbot *vs.* U. S., 10 Ct. Cls., 426; Cox *vs.* U. S., 14 Ct. Cls., 512. See Herndon's case, *ante*, 45; 10 Op. Att.-Gen., 438, 439; 15 Op., 71, 286, 306.)

It is with great reluctance that any departure is made from a practice prevailing in this office, even though the prevalence be not of long duration. In the present case, where services requiring great skill and learning have been performed with faithfulness, accuracy, and distinguished ability, it would afford especial pleasure, did the law allow it, to certify the account for payment of proper compensation to those who rendered the services; but the terms of the law forbid this pleasure. These terms are so clear that their purpose cannot be misunderstood nor ignored by executive officers who are required to give construction to them.

It only remains to say that the conclusion reached by the First Auditor is correct; and that the account presented cannot be allowed.

TREASURY DEPARTMENT,

First Comptroller's Office, December 13, 1880.

(*Ante*, page 311, note.)

It was the fifth, not the sixth, volume of the Court of Claims reports, for the printing of which Congress first made an appropriation. In the act of July 12, 1870, (16 Stats., 230, 235,) "making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending the thirtieth of June, eighteen hundred and seventy-one," there is, in the appropriation for the Court of Claims, this item: "For reporting the decisions of the court, clerical hire, labor in preparing and superintending the printing of the fifth volume of the report[s] of the Court of Claims, to be paid on the order of the court, one thousand dollars."

Accounts for the fifth, sixth, seventh, and eighth volumes were admitted by this office in accordance with precedents in cases supposed to be analogous. The act of June 20, 1874, made the usual appropriation for the ninth volume, but with a provision prohibitory of additional compensation which is *general* in its nature as to officers. The first question under this provision arose on the account of John A. Graham, Assistant Register of the Treasury, who was at that time

receiving a salary of \$2,500 per annum. He was also disbursing agent of the Joint Library Committee of Congress, and gave a bond in \$20,000. He was paid for his services as disbursing agent the sum of \$400 per annum. There was never any specific appropriation for paying Mr. Graham, but payments were made to him quarterly, sometimes from one fund, under the direction of the committee, and sometimes from another, on approved vouchers of the chairman. After the passage of the act of June 20, 1874, (18 Stats., 101, 109,) his compensation as disbursing agent was disallowed by this office. He continued to discharge the duties, however, for two years, and then made application to Congress, through Hon. Geo. W. McCrary, for relief. The matter was referred to the First Comptroller for his opinion, for which see his letter of January 25, 1877, hereto appended. No further action was taken.

The next case was that of Mr. Hopkins for "reporting decisions" for the year ending June 30, 1874. The account was allowed; but Mr. Hopkins was notified of the law as *re-enacted*.

The Comptroller expressed no opinion on the merits of the case. (See his letter of July 27, 1875.) So the matter rested until the present, the practice being rather acquiesced in than confidently approved.

Following is the letter first above referred to :

"TREASURY DEPARTMENT,
"First Comptroller's Office, Washington, D. C., January 25, 1877.

"SIR: I have the honor to acknowledge the receipt of your letter of the 23d instant, with the petition of John A. Graham, to be allowed eight hundred dollars for disbursing library funds for two years succeeding June 30, 1874. Prior to June 30, 1874, some compensation had been allowed the disbursing agent, though in Government employ, but I had strong doubts of its legality. I found it allowed when I came into the Department, and was not inclined to overrule the action of my predecessor. The re-enactment of the law in the Revised Statutes, in such strong language, reopened the question, and, in my judgment, forbade the allowance to an officer of the Department who received a fixed salary, and this seems to have been the view of Congress, expressed on various occasions. There is no objection to this allowance of Mr. Graham's claim that does not exist in many cases, and all seem to be governed by the same reasons and prohibited by the same or like law. I think the objection to the claim a reasonable one. * * * I should be disinclined to allow it.

"R. W. TAYLER, Comptroller.

"HON. GEO. W. MCCRARY,
"House of Representatives, Washington, D. C."

IN THE MATTER OF THE LEGALITY OF ALLOWING ADDITIONAL PAY TO A CLERK DETAILED AS SPECIAL AGENT OF THE INDIAN OFFICE.—BENDER'S CASE.

1. The proceedings stated which are requisite to secure payment of expenditures incurred in the Department of the Interior.
2. The duty imposed by law on the Second Auditor "to record requisitions" for money is *ministerial*, and does not give him any supervisory power over the Second Comptroller.
3. The Secretary of the Interior has incidental authority to appoint a special agent to receive, inspect, and distribute Indian supplies, purchased under the Indian appropriation act of May 11, 1880.
4. The Secretary of the Interior also has authority to detail a clerk in his Department to act as such special agent.

5. Usage has sanctioned, and is evidence of, this authority.
6. The Secretary of the Interior has incidental authority to authorize the payment of the reasonable travelling expenses and hotel-bills of such agent while on such duty and absent from Washington.
7. The authority to allow such expenses carries with it the power to fix a limit which they shall not exceed, but does not authorize payments beyond actual expenses incurred.
8. The head of a Department may give a clerk therein a leave of absence without pay; but the clerk is an *officer* during such time, subject to the restrictions and prohibitions of the Revised Statutes, sections 170, 1763, 1764, 1765, and the act of June 20, 1874, (18 Stats., 101, 109.)
9. An officer cannot have his resignation take effect at a date prior to the day of tendering it.
10. When the head of a Department, by virtue of his general and incidental authority to carry out the provisions of an appropriation law, details a clerk in his Department to act as special agent to effect the objects of the appropriation, no compensation in addition to his salary as clerk can be paid such agent for such services, unless they are specifically authorized by law, and there is an appropriation which explicitly states that it is for such additional compensation.
11. When the Second Comptroller has regularly certified a balance due a claimant, the Secretary of the Treasury, notwithstanding section 191 of the Revised Statutes, has authority and is bound, under sections 248 and 3675 of the Revised Statutes, before issuing a warrant in payment thereof, to decide whether such warrant is "in pursuance of appropriations by law."
12. After the Secretary of the Treasury has decided such question in the affirmative, and has granted the warrant asked for, the First Comptroller is authorized and required, by virtue of section 269 of the Revised Statutes, to decide, before he countersigns the warrant, whether it is "warranted by law."
13. Section 191 of the Revised Statutes does not impair the authority given to the First Comptroller by section 269 to determine whether warrants issued are "warranted by law." These sections are independent; effect must be given to both, but the former cannot control or limit the latter.
14. The opinion of the Attorney-General, of date February 7, 1877, (15 Op., 608,) considered, and distinguished in principle from the case now presented.
15. The word "warrant," as used in section 273 of the Revised Statutes, means *requisition*. So the word "warrant," as used in the last clause of section 191, as to the submission by the head of a Department to a Comptroller of any facts in his judgment affecting the correctness of a balance certified to him by the Comptroller, means *requisition* when applied to the head of any Department other than the Treasury.
16. An Auditor, in stating an account, cannot properly make in favor of a claimant an allowance not asked for by him, and not covered by a voucher.

August 10, 1880, the Acting Secretary of the Interior granted leave of absence, without pay, for fifty days, from and including August 12, to Joseph T. Bender, financial clerk in the office of Indian Affairs, and, on August 11, appointed him special agent of the office, the appointment to date from August 12, to attend to the reception of Indian

supplies at, and their distribution from, San Francisco, with authority there to purchase special supplies, and with compensation fixed at \$10.50 per day and necessary travelling expenses, as per Interior-Department order of March 24, 1879. Mr. Bender proceeded to New York, where supplies had been recently purchased, and, on August 13, was recalled and his appointment as special agent revoked. August 20, 1880, an account against the United States, in favor of Mr. Bender, was presented to the Second Auditor of the Treasury Department for four days' services, August 12 to 15, inclusive, at \$10.50 per day, (\$42,) and for items of travelling expenses in addition. The Second Auditor returned the account to the Commissioner of Indian Affairs, calling his attention to sections 170, 1764, 1765, 1768, and 2077, Revised Statutes. The Commissioner replied, that, as Mr. Bender was on leave of absence without pay, the sections cited were not applicable. The Auditor then suggested that leave without pay did not *vacate the office*, nor warrant payment of *compensation* to Mr. Bender as special agent.

With a view to meet these objections, Mr. Bender, *on the 3d of September*, tendered a resignation of his office of financial clerk, to take effect August 11. This was accepted September 4, the leave of absence was revoked, and Mr. Bender was reappointed as financial clerk, to take effect as of the 16th of August. The Auditor declined to state an account for the *per diem* compensation, but stated to the Second Comptroller an account allowing travelling expenses and hotel expenses, in accordance with the general order of the Secretary of the Interior of July 1, 1874, which allows:

“Hotel expenses not exceeding \$5 per day, when the detention is incident to or necessary for the performance of the duties for which the travel is ordered.” (See also Rev. Stats., 2077.)

The Second Comptroller decided that the full amount claimed as special agent was due, and he certified a balance accordingly to the Secretary of the Interior, who has drawn his requisition in favor of Mr. Bender for the amount, viz, \$63.60, payable out of the appropriation for “purchase of Indian supplies.” (Act of May 11, 1880, 21 Stats., 131.) The requisition has been countersigned by the Second Comptroller; and, in the usual course of business, it would have been “registered” in the Auditor's office and referred to the Secretary of the Treasury for his warrant. But the Acting Second Auditor has sent the requisition unregistered, with a letter dated October 2, 1880, to the Secretary of the Treasury, expressing a doubt whether a warrant to pay the account would be “warranted by law,” and “whether the Secretary of the Interior had any authority to appoint Mr. Bender a special agent,” (Rev. Stats., 2067,) and stating that, if he had not such

authority, "then the claim of Mr. Bender is barred by section 1765, Revised Statutes."

On October 4, 1880, the Secretary of the Treasury referred the papers "to the First Comptroller for an expression of his views on the points raised by the Second Auditor."

OPINION BY WILLIAM LAWRENCE, *First Comptroller* :

In this case, no question of law is presented in a form in which any final official action can *now* be taken by the Secretary of the Treasury or the First Comptroller. It is the duty of the Second Comptroller to certify to "the Secretary of the Department in which the expenditure has been incurred" balances arising on accounts stated by the Second, Third, and Fourth Auditors. (Rev. Stats., 273, 277.) In this matter the Second Comptroller certified to the Secretary of the Interior a balance found due to Mr. Bender. The Secretary of the Interior, as authorized by law, made a requisition upon the Secretary of the Treasury for the payment of the amount certified by the Second Comptroller. (Rev. Stats., 444.) It is the duty of the Secretary of the Treasury to grant warrants "for moneys to be issued from the Treasury in pursuance of appropriations by law." (Rev. Stats., 248, 3675.) If the *requisition* made by the Secretary of the Interior had been registered in the office of the Second Auditor, and presented in regular course of business to the Secretary of the Treasury, *then* the question would have been presented to the latter to decide whether, in his judgment, the warrant asked for by the requisition could be granted "in pursuance of appropriations by law." If he decided in the affirmative, and held the allowance to Bender duly authorized, he could issue a warrant to the Treasurer for the payment of the amount. (Rev. Stats., 248, 3675.) The warrant would then go to the First Comptroller, who would, before countersigning it, decide whether it was "warranted by law." (Rev. Stats., 269, 444, 3675.)

These are the points in the regular course of business at which the Secretary of the Treasury and the First Comptroller would respectively be called to decide authoritatively respecting the merits of the case. (See 15 Op. Att'ys-Gen., 193; Senate Ex. Doc., No. 46, 2d Sess. 40th Cong., April 7, 1868.)

There is an appropriation applicable to the payment of this claim, if the claim itself be one authorized by law. (Act May 11, 1880; 21 Stats., 131.)

There is no law or usage by which the Second Auditor can, in the form adopted, present any question for final action. It is the right of the Second Auditor to give to the Second Comptroller, with the

account stated, an opinion on its merits and place it with the papers, both in justification of his action and for the information of the Secretary of the Treasury and the First Comptroller. The Second Auditor and the Second Comptroller may also properly give to the Secretary of the Treasury or the First Comptroller any information in their possession which may be necessary to enable the latter officers to act understandingly. The duty imposed on the Auditor to record all requisitions is *ministerial*, and does not modify section 191 of the Revised Statutes, or give him any supervisory power over the Second Comptroller. The decision of the Comptroller is conclusive upon the Auditor; there is no appeal, or right to demand a review of it. (Rev. Stats., 283, 441, 444; act May 7, 1822, sec. 3; 3 Stats., 689; 15 Op. Att'ys-Gen., 139.)

Section 283 of the Revised Statutes does not *in terms* refer to requisitions from the Department of the Interior; but it refers to those from the War Department, of which the Indian Office was a bureau prior to its transfer to the Department of the Interior by the fifth section of the act of March 3, 1849, (9 Stats., 395.) By this section the Secretary of the Interior is authorized and required to "sign all requisitions for the advance or payment of money out of the Treasury, on estimates or accounts [relative to Indian affairs], subject to the same adjustment or control now [theretofore] exercised on similar estimates or accounts by the Second Auditor and Second Comptroller of the Treasury." This places the requisition now in question on the same footing as others. (Audit case, *ante*, 43.)

Assuming that the requisition will be returned to the Second Auditor to be registered, and that all the questions stated will then arise in due course, the First Comptroller, obeying the request of the Secretary of the Treasury "for an expression of his views on the points raised by the Second Auditor," submits the following pages as the result of his examination of those points.

I.—The appointment of Mr. Bender as special agent was authorized by law. If there was no authority to appoint, there could be no claim even for expenses. Such authority did exist, however. The Secretary of the Interior is charged with "the supervision of public business relating to * * * the Indians," and is authorized "to prescribe regulations," general or special, not inconsistent with law, for the performance of the business intrusted to his care. (Rev. Stats., 161, 441, 463, 464.) He is charged with the duty of purchasing supplies for Indians. (Act May 11, 1880; 21 Stats., 131.) The principles upon which the appointment of special agent was authorized have been noticed in the Inspectors' case, *ante*, 207.

Though in the case of *Stansbury vs. United States*, 8 Wallace, 37, the Supreme Court, on somewhat similar facts, says the "appointment was not authorized by law," yet this meant only that it was not *so* authorized by law as to give a right to compensation. If it were an *original question*, one entirely *res integer*, it might be doubtful whether a clerk in a Department at Washington, whose duties seem to be fixed *therein* by law, and for whose services appropriations are *accordingly* regularly made, could be assigned to duty away from the Department. (Rev. Stats., 166, 169, 181, 440; act June 15, 1880; 21 Stats., 231.) *Long usage* has, however, settled that the head of any Department may detail a clerk therein as *special agent* to perform some duties for which any other person could be appointed. General usage, sufficiently continued, becomes law. That "it hath always been so," is a strong presumption in favor of the legality of a thing or practice. *Communis error facit jus*. (4 Inst., 240; *Isherwood vs. Oldknow*, 3 Maule and Sel., 369, 397.) Congress has *recognized* the usage in question. Thus, section 183 of the Revised Statutes does not *give* authority to detail a clerk in a Department to investigate frauds, but recognizes the *existence* of the authority, by virtue of the general powers of heads of Departments to do so, and authorizes clerks so detailed to administer oaths. So section 3614 does not give authority to employ special agents, but recognizes the independent existence of such authority, under the limitation specified. (*Birch's case*, *ante*, 156.) The same may be said of section 2067. Appropriations which recognize the usage have been made by Congress for many years. This legislative interpretation is entitled to consideration. (*Rex vs. Loxdale*, 1 Burr., 447; *Coutant vs. The People*, 11 Wend., 511; Sedgwick, Stat., 2d ed., 214; *Edwards' Lessee vs. Darby*, 12 Wheat., 210.)

The appointment of Mr. Bender as special agent being authorized, his travelling expenses and hotel-bills, while on the duty assigned to him, can properly be paid. The head of a Department may *limit* the allowance for expenses, but cannot in general *fix a sum*, as and for expenses to be allowed, in cases where they do not in fact reach the limit fixed. If he could, he would virtually have the power to give additional compensation to the extent in which the sum paid would exceed the actual expenses incurred. By the terms of section 2077 of the Revised Statutes, persons who are required, in the performance of their duties under chapter 1 of the Title of the Statutes relating to the Indians, to travel from one place to another, may be allowed either their actual expenses or a reasonable sum in lieu thereof; with an exception not material to our present purpose. The circumstance that Congress has specially

authorized in this case the allowance of a reasonable sum in lieu of actual expenses, is sufficient evidence that there is no general authority to do so. (See, also, Rev. Stats., 4017.)

The order of the Secretary of the Interior of July 1, 1874, is therefore in proper form. An order to allow a fixed sum per day for hotel-expenses would not be authorized.

Neither the *per diem* of \$10.50, nor any other sum as *compensation*, can be paid to the special agent while holding, as Mr. Bender did, the office of "financial clerk." The "financial clerk" was an *officer* within the meaning of section 1765 of the Revised Statutes; his salary was \$2,000 per year. (Act June 15, 1880; 21 Stats., 230; Wood's case, *ante*, 8; Herndon's case, *ante*, 49; United States *vs.* Germaine, 99 U. S., 508.) As special agent he was *not* an *officer*. He cannot claim the rights of one holding *two distinct offices*.^{*} (Herndon's case, *ante*, 48, 51; Converse *vs.* U. S., 21 How., 470; Hoyt *vs.* U. S., 10 How., 141; 15 Op., 307; Rev. Stats., 2074.) An argument has been submitted in this matter, in which it is urged that from the reasoning of Justice Davis in *Stansbury vs. U. S.*, 8 Wall., 36, the act of August 31, 1852, (now sec. 1763, Rev. Stats.,) did not modify section 2 of the act of August 23, 1842, (now Rev. Stats., 1765;) and that, Congress having retained and re-enacted each of these sections as well as section 1764 of the Revised Statutes, each section must be considered operative as if separately in force. If so, this would require a rule of construction somewhat different from that which would apply if these three sections had been for the *first time* enacted as *one new statute*, instead of being a compilation. It is on this view that the opinion of the Attorney-General, of June 11, 1877, (15 Op., 307,) finds much sanction. (Herndon's case, *ante*, 51.) The history of laws is to be considered in giving them construction. Assuming that Mr. Bender *was a clerk* while acting as special agent, the compensation claimed is prohibited by the Revised Statutes, taken in connection with the third section of the act of June 20, 1874. (18 Stats., 101, 109; Rev. Stats., 1765, 1835; see Rev. Stats., 170, 850, 2077; Herndon's case, *ante*, 50; Reporter's case, *ante*, 307; Opinions of Attorneys-General: Wirt, 1 Op., 435; Grundy, 3 Op., 422, 473; Gilpin, 3 Op., 621; Legaré, 4 Op., 126, 138, 139; Nelson, 4 Op., 269; Mason, 4 Op., 464; Toucey, 5 Op., 74, 567; Black, 9 Op., 123; Bates, 10 Op., 31, 435, 442, 444; Pierrepont, 15 Op., 71; Devens, 15 Op., 286. *Contra*: Crittenden, 5 Op.,

^{*} In Herndon's case, *ante*, 51, an extract is given from the opinion of the Attorney-General, of June 11, 1877, (15 Op., 307,) as to the question whether an *officer* with a salary less than \$2,500 can, under section 1763 of the Revised Statutes, hold another office and receive its salary.

765; Cushing, 8 Op., 325.) See, also, as to the qualification with which the general principle is to be applied: Evarts, 12 Op., 459; Hoar, 13 Op., 7, 15; Hill, Bristow, (respectively, Assistant and Acting,) 13 Op., 581; Devens, 15 Op., 306; Taft, 15 Op., 608; Hoyt *vs.* U. S., 10 How., 141; U. S. *vs.* Jones, 18 How., 96; Converse *vs.* U. S., 21 How., 463; U. S. *vs.* Eliason, 16 Pet., 291; U. S. *vs.* Shoemaker, 7 Wall., 338; Stansbury *vs.* U. S., 8 Wall., 33; s. c., 1 Ct. Cls., 123; Wilson *vs.* U. S., 1 Ct. Cls., 206; Harvey *vs.* U. S., 3 Ct. Cls., 38; Jackson *vs.* U. S., 8 Ct. Cls., 354; Folger *vs.* U. S., 13 Ct. Cls., 93; Cox *vs.* U. S., 14 Ct. Cls., 512; U. S. *vs.* White, Tan. Dec., 152; U. S. *vs.* Smith, 1 Bond, 68; Dickens *vs.* U. S., Dev. Ct. Cls. R., 42; U. S. *vs.* Bassett, 2 Story, 389; U. S. *vs.* Duval, Gilp., 356; U. S. *vs.* Executors of McCall, Gilp., 563; Brightly, Fed. Dig., title Officer, 600; acts of Congress, 3 Stats., 696; 5 Stats., 349, 432, 510, 525, 763; 9 Stats., 297, 365, 367, 504, 542, 543, 629; 10 Stats., 100, 119, 120, 167, 168; 18 Stats., 109; 19 Stats., 45; 21 Stats., 236.

A careful perusal of the statutes, decisions, and opinions above cited will show the imperfection of language when attempting to restrain double compensation, and its perfect capacity to authorize it.

The claimant is not aided in his claim to *per diem* compensation by his *leave of absence without pay*. During the term of such absence Mr. Bender was still an officer, as financial clerk. His absence did not vacate his office. (Rev. Stats, 177, 178, 179; 15 Op. Att'ys-Genl., 306.) During the absence no other person could have been appointed to fill his office, and earn the compensation attached to it.

If the special agency to which Bender was appointed had been an office incompatible with that of financial clerk, his acceptance of the agency would have been deemed a resignation of his clerkship. (Angell & Ames, Corp., 10th ed., sec. 434; Willcox, Mun. Corp., 240; Verrier *vs.* Sandwich, 1 Sid., 305; The King *vs.* Godwin, Doug., 398, *n.* 22; Comyn's Digest, tit. *Office*, B. 6; Milward *vs.* Thatcher, 2 T. R., 87; The King *vs.* Pateman, *Id.*, 779; Rex *vs.* Gayer, 1 Burr., 245; The People *vs.* Carrique, 2 Hill, 93; The Regents of the University of Maryland *vs.* Williams, 9 Gill & J., 365, 422; The People *vs.* Green, 58 New York, 296, 304; Rex *vs.* Marshall, cited in The King *vs.* Trevenen, 2 B. & Ald., 341.) Executive officers have authority to determine when a resignation takes place. The acceptance by a member of Congress of a military commission in a volunteer regiment, mustered into the service of the United States, operates as a forfeiture of his seat. (Yell's case, 2 Cong. Cont. Elect. Cases, 93; Byington *vs.* Vandever, *Id.*, 395; Stanton *vs.* Lane, *Id.*, 637.) So of any other office. (Van Ness' case, 1 Cong. Cont. Elect. Cases, 123.)

But the agency was not an office at all, much less an office *incompatible* with that of financial clerk. (Wade's case, *ante*, 300; United States *vs.* Germaine, 99 U. S., 508; Commonwealth *vs.* Binns, 17 Sergeant & R., 222.)

An office can be created only by law; its duties must be defined by law. An agent is appointed for duties not specified by law. There is a wide difference between an agency and an office. An officer is required by law to take an oath of office; an agent is not.

An office can only be vacated by declining to accept it, by resignation, judicial ouster, removal, or death. What effect the total abandonment of the duties of an office or position might have on the right to salary or otherwise, it is unnecessary now to discuss. (See Evans's case, 2 Lawrence, Compt. Dec., 10; United States *vs.* Williamson, 23 Wall., 411; United States *vs.* Lippitt, 100 U. S., 663.)

It is competent for the head of a Department to give a clerk a leave of absence without pay. Long usage has settled this. But section 1765 of the Revised Statutes prohibits extra compensation to an *officer*, without regard to the fact whether he is on duty as such or not. To permit absence without pay to afford an occasion for extra compensation, would defeat the whole purpose of the section.

The claimant is not aided in his claim to *per diem* compensation by his resignation. This was tendered on September 3, to take effect as of August 11, preceding. There can be no retrospective resignation of an office. (4 Op. Att'ys-Gen., 124, 125, 603, 608; Collins *vs.* United States, 15 Ct. Cls., 22, 34.) If such resignation were valid, it would enable an *officer* to escape many official liabilities.

This claim for compensation finds no sanction in the opinion of the Attorney-General of February 7, 1877. (15 Op., 608.)

The last clause of section 1765 of the Revised Statutes has given rise to cases involving its construction. This section prohibits any and every *officer* from receiving compensation beyond his salary "for any * * * service or duty whatever;" but the last clause makes an exception by saying—

"Unless the same is [1] authorized by law, and [2] the *appropriation* therefor *explicitly states* that it is for *such* [a] additional pay, [b] extra allowance, or [c] [additional] compensation."

It was on this clause that the Attorney-General (15 Op., 609) based the opinion referred to, namely, "that where the service in question is [1] one *required* by law, but not of any particular official, and [2] compensation therefor is fixed by competent authority, and [3] is appropriated, the *officer* who [4] under due authorization performs the

service is entitled to the compensation." This construction was made upon the authority of *Converse vs. The United States*, 21 How., 463 which has been duly considered.

In the matter discussed by the Attorney-General, an *officer* acted as counsel for the United States in taking testimony to be used before the Court of Commissioners of Alabama Claims, held under the act of June 23, 1874, (18 Stats., 245.) The fourth section of the act authorized the payment of the "necessary incidental expenses" of the court, and the fifteenth section made an appropriation for their payment. The incidental expenses were to be "certified by the presiding judge of said court, and to be audited and paid on vouchers under the direction of the Secretary of State." The amount of the compensation for the service rendered was expressly authorized to be *fixed*. This service was held to fall within the words "necessary incidental expenses," and, being appropriated for, and so fixed in amount, was regarded as falling within the exception referred to. That opinion carries the exception of the statute quite far enough. (See *Whiting's case*, 10 Op., 439; *Converse vs. U. S.*, 21 How., 463.) The evident purpose of the exception, when read in connection with the act of June 20, 1874, (18 Stats., 101, sec. 1; 109, sec. 3,) is to permit an officer to receive compensation for services not connected with his office, only when it appears that Congress has made an appropriation for *such* services—that is, when Congress has, *knowing* that it is to go to an officer, appropriated *money* for such services. To hold that an *officer* may receive compensation for services not connected with his office merely because (1) such services are authorized; (2) that an appropriation is made to pay for them; and (3) with nothing in the law to show that Congress *intended* that an *officer* is to be the beneficiary,—is to permit officers, in all cases of authorized services and compensation, to be beneficiaries. This construction would defeat the whole purpose of section 1765 and of the prohibition in the act of June 20, 1874. These statutes are to be so construed as to avoid this; *ut res valeat quam pereat*.

There is a *rule of construction* applicable to such *exceptions* ingrafted on statutes; namely, that there should be a full compliance with the conditions of the exception. Where the body of a statute establishes a *general policy*, no subsequent law should be construed as engrafting an exception on it, unless the law itself clearly shows such purpose. This results from rules applicable to the construction of provisos and exceptions, as well as from the rule that repeals by implication are not favored. (*United States vs. Dickson*, 15 Pet., 165; *Wayman vs. Southard*, 10 Wheat., 30; *Lessee of Huideköper vs. Burrus*, 1 Wash. C. C.,

119; 1 Kent, Comm., 463; Thornhill *vs.* Hall, 2 Clark & Finnelly's House of Lords Cases, 36; Sedgwick, Stat., 2d ed., 50, 361; Smith, Stat. and Const. Law, 712; Voorhees *vs.* The Bank of the United States, 10 Pet., 471; Savings Institution *vs.* Makin, 23 Maine, 360, 378; Potter's Dwarrris, 118.)

If it be conceded that compensation for the services of Mr. Bender as agent is to be regarded as *in fact* a necessary incidental expense, yet the law under which he was appointed does not *in terms* provide for its payment; and without such provision there is no authority to pay for his services. Section 1765 of the Revised Statutes prohibits every officer whose salary is fixed by law or regulations from receiving any pay or allowance in addition to such salary, unless the same is authorized by law and an appropriation is made therefor which explicitly states that it is for such additional pay. It may be true that an *incidental expense* incurred, as in this case, by force of an appropriation act which uses only *general terms*, and does not directly mention "*incidental expenses*," is as well authorized by the former mode as by the latter; or, in other words, that, within the meaning of section 1765, it is fully "authorized by law." (Safford's case, *ante*, 262.) But when the *incidental expense* is incurred under an authority conferred by *general terms*, and the appropriation act is in *general terms* for the *general service*, it cannot be said that the appropriation "*explicitly states*" that it is for compensation in addition to an existing salary. Yet this is the character of the legislation under which Mr. Bender was appointed agent. The provisions which authorized the appointment of Mr. Bender as agent are contained in sections 161, 441, 463, and 464 of the Revised Statutes. The act of May 11, 1880, (21 Stats., 114, 131,) gives, by implication, the authority to make the appointment, and makes an appropriation for the payment of incidental expenses. It reads as follows:

AN ACT making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and eighty-one, and for other purposes.

"*Be it enacted*, * * * That the following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department, and fulfilling treaty stipulations with the various Indian tribes, namely:

* * * * *

"Telegraphing and purchase of Indian supplies: To contract for the Indian service, advertising at rates not exceeding regular commercial rates, inspection, and all other expenses connected therewith, including telegraphing, thirty thousand dollars: *Provided*, That the Secretary of the Interior be, and he is hereby, authorized, whenever it can be done

advantageously, to purchase for use in the Indian service from Indian manual and training schools, in the manner customary among individuals, such articles as may be manufactured at such schools, and which are used in the Indian service. Accounts of such transactions shall be kept in the Indian Bureau and in the training-schools, and reports thereof made from time to time."

In Whiting's case, 10 Op., 439, the Attorney-General declared that the case of *Converse vs. United States*, 21 How., 463, authorized the extra compensation "*only in case such services [of an officer] are required by law, and the compensation thereof fixed [in amount] by law.*" In Mr. Bender's case the compensation is *not* "fixed by law," but by the Secretary of the Interior. The facts in Whiting's case are similar to those now under consideration. The Attorney-General uses language in that case which, with a little change, is applicable here; he says:

"It was perfectly competent for the Secretary of the Interior to employ a person to perform the duties in question, and to agree that he should be paid therefor out of the fund appropriated [for Indian supplies], the amount which he agreed [Mr. Bender] should receive. But, since *no office was created by law for the performance of those duties, and no remuneration therefor fixed by law*, it was *not competent for the Secretary* to add them to the other duties of an officer receiving a fixed compensation therefor, and pay him an additional sum for performing the additional duties. This is the very thing which these statutes, as construed, not only by the majority of my predecessors, but by the Supreme Court, were passed to prohibit." (*United States vs. Shoemaker*, 7 Wall., 341; *Stansbury vs. United States*, 8 Wall., 37.)

In *Converse vs. United States*, 21 How., 473, the court says:

"The just and fair inference * * * is, that *no discretion* is left to the head of a department to allow an officer who has a *fixed compensation* any credit beyond his salary, unless the service he has performed is required by existing laws, and the remuneration for them fixed [in amount] by law."

This does not follow, very obviously, from the language of the statute, (Rev. Stats., 1765,) but, under the construction put upon it, *discretion* is taken away from heads of Departments to make allowances for compensation to officers whose compensation is fixed. The statute would seem to warrant the conclusion that no payment could be made to an officer beyond his salary, unless the law authorizing the additional service declares that an officer shall be entitled to receive it. The act of June 20, 1874, sec. 3, (18 Stats., 109,) has changed the rule laid down by the courts, and now leaves no doubt on the subject. It declares "That no civil officer * * * shall hereafter receive any compensation or perquisites, directly or indirectly, from the Treasury or property of the United States beyond his salary or compensation allowed by law." And, again, that "hereafter it shall be unlawful to allow or pay

to any of the persons designated in this act any additional compensation from any source whatever." (18 Stats., 101.) The officers of the Indian Office are designated in this act, p. 104.

The act of June 20, 1874, is a part of the legislation having the same general purpose and effect—to prohibit extra compensation. (See Reporter's case, *ante*, 307.) The authority given in the act of June 15, 1880, (21 Stats., 236,) to the Attorney-General to pay for the editing, &c., of the fifteenth and sixteenth volumes of the Opinions of the Attorneys-General, "notwithstanding section seventeen hundred and sixty-five, Revised Statutes," is a legislative construction of that section of the Revised Statutes, leading to the same result.

And so, by the special reference therein made to that section, are the acts of May 1, 1876, (19 Stats., 45, ch. 88,) and March 3, 1879, (20 Stats., 384.)

The claim for compensation in this case cannot, in view of section 1765 of the Revised Statutes, be allowed, even without reference to the prohibitions contained in the act of June 20, 1874, because the amount is fixed, not by law, but by the Secretary of the Interior.

These principles and authorities are conclusive against the right to pay compensation in this case.

II.—The First Comptroller must, in the exercise of the authority conferred on him by section 269 of the Revised Statutes, *judge* whether a warrant drawn by the Secretary of the Treasury is authorized by law; he will, therefore, decline to countersign a warrant for the payment of that portion of the balance certified in favor of the claimant which includes *compensation for services*, because such payment is not "warranted by law."

This, as will be seen from many considerations, is the manifest duty of the First Comptroller.

The chief provisions of the Revised Statutes, which prescribe the duty of the First Comptroller in the matter of countersigning warrants drawn on the Treasury, are as follow:

"SEC. 191. The BALANCES which may from time to time be stated by the Auditor and certified to the heads of Departments by the Commissioner of Customs, or the Comptrollers of the Treasury, upon the settlement of public accounts, shall not be subject to be changed or modified by the heads of Departments, but shall be conclusive upon the executive branch of the Government, and be subject to revision only by Congress or the proper courts. The head of the proper Department, before signing a warrant for any BALANCE certified to him by a Comptroller, may, however, submit to such Comptroller any FACTS in his judgment *affecting the CORRECTNESS of such BALANCE*, but the decision of the Comptroller thereon shall be final and conclusive, as hereinbefore provided."

"SEC. 248. The Secretary of the Treasury shall * * * grant, under the limitations herein established, or to be hereafter provided, all warrants for moneys to be issued from the Treasury in pursuance of appropriations by law."

"SEC. 269. It shall be the duty of the First Comptroller * * * to countersign all warrants drawn by the Secretary of the Treasury, *which shall be warranted by law.*"

"SEC. 3675. All warrants drawn by the Secretary of the Treasury, upon the Treasurer of the United States, shall specify the particular appropriation to which the same should be charged; and the moneys paid by virtue of such warrants shall, in conformity therewith, be charged to such appropriation in the books of the Secretary, First Comptroller, and Register."

The proper construction of these provisions is, that when a balance is regularly certified by the Second Comptroller, it is, by force of section 191, as to all questions of law and fact, conclusive in all respects "upon the executive branch of the Government," *except*, only, that before issuing a warrant for the payment of such balance, the Secretary of the Treasury must, by force of sections 248 and 3675, decide whether the warrant may be granted in pursuance of an appropriation made by law, and that the First Comptroller, before countersigning such warrant, must determine whether it is "warranted by law."

Balances certified by the First Comptroller are in effect conclusive "upon the executive branch of the Government," because the statute (Rev. Stats., 269) does not charge any other officer with the duty of deciding whether a warrant in payment thereof is warranted by law. (Opinions Attorneys-General, August 19, 1876, 15 Op., 596; May 15, 1877, 15 Op., 626; August 2, 1876, 15 Op., 139.)

In other words, the rule is, that when the Secretary of the Treasury is asked to issue a warrant in such case as this, he must then decide whether it is grantable in pursuance of an appropriation by law, and when the First Comptroller is asked to countersign a warrant, he cannot do so if the record shows that the amount thereby to be paid, or any part thereof, is for a claim or service wholly unauthorized by law, or if the balance has been certified without jurisdiction or authority on the part of the Second Comptroller.

This is rendered clear by approved principles of construction, by the history of the laws, their language, and the usages under them.

Among the established rules of construction are these:

"The intention of the lawgiver and the meaning of the law are to be ascertained by viewing the whole and every part of the act. One part of the statute must be so construed by another that the whole may, if possible, stand; and that, if it can be prevented, *no clause, sentence, or word* shall be superfluous, *void*, or *insignificant.*" (Broom, Leg. Max., 7th Am. ed., 585; Stowel *vs.* Lord Zouch, Plowd., 365; Doe *dem.* By-

water *vs.* Brandling, 7 B. and C., 643; Co. Litt., 381 *a*; Wing. Max., 167; 8 Rep., 236; Hix's and Gott's case, 4 Leon. R., 248; 2 Inst., 173; Potter's Dwarria, Stats., 189; Sedgwick, Stats., 2d ed., 212.)

"Verba posteriora propter certitudinem addita, ad priora quæ certitudine indigent sunt referenda. Ex antecedentibus et consequentibus fit optima interpretatio."

"Words in a statute are never to be construed as unmeaning and surplusage, if a construction can be legitimately found which will *give force to* and preserve *all the words* in the act." (Potter's Dwarria, 179, note 1; Leversee *vs.* Reynolds, 13 Iowa, 310; Hartford Bridge Co. *vs.* Union Ferry Co., 29 Conn., 210.)

Under these rules, effect must be given as well to sections 248, 269, and 3675, as to section 191. Each must be held to perform a different office or have a different purpose—each being of equal dignity.

If it be held that section 269 does not authorize the First Comptroller to decide in this case whether a warrant is "warranted by law," then it must also be held that these words are *without meaning*. But they have a meaning. They prescribe a duty for the First Comptroller; they are not and cannot be applied to the duty of any other officer. The Second Comptroller does not countersign any warrant; the First Comptroller is required to countersign all those which are "warranted by law." Under any other construction the right of the Secretary of the Treasury to *judge*, in such case as this, whether a warrant is grantable "in pursuance of appropriations by law," would be taken away.

If the purpose of section 269 had been to require the First Comptroller to countersign "*all* warrants drawn by the Secretary of the Treasury," and thus to act in a merely ministerial capacity, Congress would have so said. But Congress did not so prescribe; it added to the above words these: "Which shall be warranted by law;" thereby imposing on the First Comptroller a discretionary duty. These words would be surplusage if the First Comptroller had no question to determine or judge in the matter of countersigning warrants. Section 191 makes balances certified conclusive, subject to exceptions therein named, and section 248 says, that the Secretary "shall grant, under the limitations herein established or to be hereafter provided, all warrants for moneys to be issued from the Treasury in pursuance of appropriations by law." The language of this section as to the duty of the Secretary is different from that of section 269, in prescribing the duty of the First Comptroller, and it is to be presumed there was a purpose in the difference. In an able and elaborate discussion on claims by Hon. H. F. French, Assistant Secretary of the Treasury, it is said: "By section 269, Revised Statutes, it is the duty of the Comptroller

to countersign all warrants drawn by the Secretary *which* shall be warranted by law; and it is the duty of the Secretary to withhold his signature from a warrant if there is no appropriation out of which it can properly be paid." (House Ex. Doc. No. 27, 2d Sess. 45th Cong., p. 43.)

It is not said that it is the duty of the First Comptroller to countersign *all warrants* whatsoever, but only those "warrants *which* shall be warranted by law." This does not create a right on the part of the First Comptroller to bind the *action* or the *judgment* of the Secretary, or even the Second Comptroller, but only to perform a duty, which is as explicitly required as language can make it. When the law requires a duty to be performed by a specially designated public officer, it is difficult to perceive how the performance of such duty can be said to be in subordination to any authority other than that of the law itself. No officer is above the law. The Supreme Court has said: "We have no officers in this Government, from the President down to the most subordinate agent, who does not hold office *under the law*, with *prescribed duties* and limited authority." (The Floyd Acceptances, 7 Wall., 676.)

"Prescribed duties" enjoined by statute and intrusted to the *exclusive* judgment of any officer, however humble, are not *quo ad hoc* duties of a subordinate officer except as he is subordinate to the law, nor does he subordinate others to him or to his acts, but merely does those things which are authorized and required, or omits to do those things which are prohibited by law, and as to such duties he is the judge, and therefore is bound to judge.

It has been well said in respect of the head of a Department, and may be as truly said in regard to any other of whom the law expressly requires the performance of any duty on the exercise of his own judgment, that "his acts and decisions on *subjects submitted* to his jurisdiction and control by the * * * laws do not require the approval of any officer of another Department to make them valid and conclusive." (U. S. *vs.* Jones, 18 How., 95.)

There is in this case an expression of opinion that "accounting officers" have no duty "of revising the judgments * * * of heads of Departments." (Page 96.) This is true as to matters which by law are submitted to the judgment of heads of Departments. But heads of Departments are not charged with the duty of being accounting officers. That case was decided *prior* to the act of March 30, 1868, (now section 191 of the Revised Statutes,) since which the head of a Department cannot revise balances certified by a Comptroller, whose decision is made "conclusive."

The language of Mr. Justice Daniel, in the same case, may *now* be properly applied to the action of accounting officers: "Each and every officer has his duties to perform, and is bound to their performance with independence and good faith; and no matter whose acts may be brought before him, whether those of his immediate superior or one much higher in power, he is bound to bring them all to the test of the law, and to pronounce upon all, from the greatest to the least." Upon the authority of the same case, it may be said that any order which takes effect and is operative by law on the judgment of *one* officer, cannot be revised by another. But, if the law requires the exercise of the judgment of *two* officers before an official act can be operative, both officers must act, as in the case of claims requiring the consideration of *both* an Auditor and Comptroller. (15 Op., 139.)

The sense in which the word "countersign" is used in the statute is to be determined not merely from its popular meaning, but from its connection and the evident purpose of Congress. *Qui hæret in litera, hæret in cortice*. If it be said that the purpose of counter-signature is merely to attest, why has Congress imposed the duty upon the First Comptroller to judge whether a warrant is "warranted by law," before the counter-signature can be lawfully made?

It is not to be supposed, in view of the accounting system created by law, that Congress intended to impose on the heads of Departments, who are clothed with other vast powers, and required to perform a multitude of other duties, the duty of revising, in all cases in respect to the payment of innumerable balances, the action of six Auditors, a Commissioner of Customs, and two Comptrollers. It was well said by Mr. Woodbury, Secretary of the Treasury, in December, 1834, that "it is manifest that no effectual check can ever exist in any case where the same officer authorizes the expenditure and audits or controls the audit of the accounts." (Senate Doc. No. 6, p. 5, 2d Sess. 23d Cong.; see also Ex. Doc., 2d Sess. 24th Cong., No. 71; Ewing's Senate Rep., June 9, 1834, Senate Doc., No. 422, 1st Sess. 23d Cong., pp. 31, 274.) Mr. Ewing, in a report made to the Senate, January 27, 1835, referring to the powers of the Postmaster-General to authorize, control, and allow expenditures, said: "The checks of various inferior officers upon each other are of no value, when all are guided and controlled in their acts by one dominant will." (Senate Doc., 2d Sess. 23d Cong., No. 86, p. 89.) Postmaster-General Kendall, in his annual report of December 4, 1835, said: "It is believed to be a sound principle, that public officers, who have an agency in originating accounts, should have none in their settlement. The War and Navy Departments are in general organ-

ized upon this principle. In the orders, contracts, and regulations of the heads of those Departments, or their ministerial subordinates, issued and made in conformity with law, accounts originate; the moneys are generally paid by another set of agents, but partially dependent on the heads of the Departments; and the accounts are finally settled by a third set who are wholly independent of them. If from any cause an illegal expenditure be directed by the head of a Department, it is the duty of the disbursing agent not to pay the money; and if he does pay it, it is the duty of the Auditors and Comptrollers to reject the item in the settlement of his accounts." (Ex. Doc., 1st Sess. 24th Cong., No. 2, pp. 399, 400.)

If section 191 of the Revised Statutes stood *alone*, the maxim would apply, *generalis regula generaliter est intelligenda*. Its comprehensive language would render all balances certified by the Second Comptroller conclusive in all respects on the Secretary of the Treasury and the First Comptroller. It declares that such balances "shall not be subject to be changed or modified by the heads of Departments, but shall be conclusive upon the executive branch of the Government, and be subject to revision only by Congress or the proper courts." The words "executive branch," if they were not elsewhere qualified, would include all executive officers, and for some purposes they do include all.

It is a rule that what is generally spoken shall be generally understood, *generalia verba sunt generaliter intelligenda*, unless it be qualified by some special subsequent words, as it may be; *e. g.*, the operative words of a bill of sale may be *restricted* by what follows. *Verba generalia restringuntur ad habilitatem rei vel personam*: General words may be aptly restrained according to the subject-matter or person to which they relate.

Construing this section by these rules, it follows that the Secretary of the Treasury must, under sections 248 and 3675, when a balance certified by the Second Comptroller is presented to him for a warrant, decide whether it is grantable "in pursuance of appropriations by law." The statute expressly confers that authority on him, and his decision is final and conclusive on the Second Comptroller.

A portion of the general words of section 191 must be, and is, restrained by the general words of sections 248, 269, and 3675. When section 191 in general terms declares that a balance, certified by the Second Comptroller, is *conclusive* on the executive branch, it is generally conclusive as to the *amount* certified, because, as to such matter, no law has, as a general rule, given any other officer jurisdiction; but certification of a balance is not *conclusive* as to the question whether it is

payable "in pursuance of appropriations by law," because section 248 has given the Secretary of the Treasury jurisdiction over *that* matter; and it is not *conclusive* on the question whether payment is "warranted by law," because section 269 has given the First Comptroller jurisdiction to decide that question. Section 191 cannot be permitted to restrain that portion of section 269 which makes it the duty of the First Comptroller to decide whether warrants are "warranted by law," because that would *totally* defeat the purpose of the latter section. A proper effect can be given to section 191 without requiring such construction.

The *history* of section 191 shows that its purpose was to make the "balances" certified by the Second Comptroller generally conclusive as to *amounts* upon the heads of Departments and executive branch of the Government, but not conclusive (1) upon the Secretary of the Treasury in judging whether a balance so certified is "in pursuance of appropriations by law," or (2) upon the First Comptroller in deciding whether warrants in payment thereof are "warranted by law." It is not intended to say that the decision of the Second Comptroller can, on all questions of law, be revised, but on some questions, as herein stated, it may be.

The history of the legislation in reference to the subject-matter of a statute is an important element in its construction. (*Henry vs. Tilson*, 17 Vt., 479; 1 Kent, Comm., 462; 10 Co., 576; Plowd., 10, 57, 205, 350, 363; *Boulton vs. Bull*, 2 H. Blackst., 463, 499; *Gibbons vs. Ogden*, 9 Wheat., 189; *Sedgwick*, Stats., 2d ed., 214; *Herndon's case*, *ante*, 51, and *note*; *Rogers vs. Bradshaw*, 20 Johns., 744; *McCartee vs. Orphan Asylum*, 9 Cow., 507; *Rexford vs. Knight*, 15 Barb., 642; *Waterford and Whitehall Turnpike vs. People*, 9 Barb., 161.)

It was insisted at an early period that the *President*, under his authority "to take care that the laws be faithfully executed," might control the action of the heads of Departments and other officers on questions of law and fact in their action on claims. But this was denied, and it was afterwards finally determined that the decision of the proper accounting officer was conclusive, except in cases under statutes specially providing otherwise. (Opinions of Attorneys-General, *Wirt*, 1823, 1 Op., 624; 1824, 1 Op., 680; *Berrien*, 1829, 2 Op., 303; *Taney*, 1832, 2 Op., 507; *Stanbery*, 1868, 12 Op., 360; *Williams*, 1873, 14 Op., 275; 1 Mayo's Treasury Department, 8; act March 3, 1823, 3 Stats., 755, sec. 2; *The Floyd Acceptances*, 7 Wall, 676.)

It was for a long time held that the *heads of Departments* had the power to review and reverse the decisions of the Comptrollers on questions of law and fact. (1 Op., *Lee*, 77, 81; 1 Op., *Wirt*, 366, 678; 2

Op., Berrien, 303; 2 Op., Taney, 463; 2 Op., Butler, 625; 5 Op., Johnson, 90; 5 Op., Crittenden, 636; 7 Op., Cushing, 724; 8 Op., Cushing, 299; 10 Op., Bates, 231; U. S. *vs.* Jones, 18 How., 92.)

On September 15, 1866, the Attorney-General gave an opinion that "the Secretary of War has authority to withhold his signature from a requisition for AN AMOUNT which he believes to be not properly due, though certified to by the accounting officers of the Treasury Department." (12 Op., 43.)

It seems that the immediate occasion which gave rise to the act of March 30, 1868, (Rev. Stats., 191,) was a controversy between the Secretary of War and the Second Comptroller as to the right of the former to *reduce the amount* of claims as certified by the latter.

The Secretary of War (Mr. Stanton) said, in a letter dated April 6, 1868, in answer to a resolution of the Senate:

"Since the war it has sometimes happened that war claims, or claims for army supplies allowed by the Quartermaster-General, have been *largely increased* by the accounting officers of the Treasury, viz., the Comptroller and Auditor, and *sums* allowed which, in the judgment of the chief of the Quartermaster's department, were not honest or just. *Such* cases of conflict were submitted to the Secretary of War, and if, upon examination, he was satisfied that a *larger sum* had been allowed by the accounting officers of the Treasury, or that claims were passed by them unauthorized by the law and the facts, the Secretary of War declined to make a requisition *for a sum larger than appeared to be warranted by the REPORT of the Quartermaster-General or the FACTS in the case*, leaving the claimant to pursue his remedy for the residue before the Court of Claims or before Congress; the authority of the Secretary of War to reduce the amount settled by the Auditor and Comptroller being disputed by them and by claimants, they insisting that the decision of the Auditor and Comptroller was, by law, final and conclusive.

"On the other hand, the Secretary of War held that such decision was conclusive only to the extent *that no more could* be paid than was allowed by the accounting officers, but that the Secretary was not bound to draw upon the Treasury and *pay a sum that he believed not to be due.*" * * *

"If it was the design of Congress to deprive the head of a Department of all power of revision, and compel him to pay claims that he is satisfied are unreasonable or dishonest, he ought to be relieved from the obligation of making requisitions for such claims, and the authority vested in some other officer to make the requisition, as in the case of adjudications by the Third Auditor, under the act of March 3, 1849, (Statutes at Large, vol. 9, p. 414,) the fourth section of which act makes the amount payable out of the Treasury on production of a copy of the adjudication of the Auditor. It does not seem fair to compel the head of a Department to be responsible for requisitions and payments which he believes to be contrary to the evidence and the facts." (See Senate Ex. Doc. No. 46, 2d Sess. 40th Cong., April 7, 1868.)

It thus appears that the conflict between the Secretary of War and *Second Comptroller* was, whether the decision of the latter was conclu-

sive as to the *amount* to be paid. It is in the light of this history and the preceding practice that section 191 of the Revised Statutes is to be construed. It was not designed to affect the power elsewhere given to the Secretary of the Treasury to ascertain whether there be an appropriation on which a warrant can be lawfully drawn, (Rev. Stats., 248, 3675,) or the power of the First Comptroller elsewhere given, (Rev. Stats., 269, 3675,) to ascertain whether a balance has been certified without any lawful authority over the subject, or whether payment in the particular case is unauthorized or prohibited by law. (Butler's case, *ante*, 26; Providence-Hospital case, *ante*, 79; Flack's case, *ante*, 187; Savings-Bank case, *ante*, 194.)

In *Winnisimmet Co. vs. United States*, 12 Ct. Cls., 326, it is said:

“A long-pending dispute had existed between some of those heads [of Departments] and the accounting officers of the Treasury, as to their respective powers over claims and accounts. The question was submitted successively to Attorneys-General Wirt, Berrien, Taney, Butler, Crittenden, Johnson, Cushing, Bates, and Stanbery, by all of whom it was held that the auditing and controlling of accounts were subject to the superior supervision of some appropriate head of a Department. In the opinion of Mr. Stanbery, delivered in 1866, the previous ones are referred to. (12 Op., 43.)

“In view of these opinions, and to settle the dispute by legislation, the act March 30, 1868, (15 Stats., 54,) was passed.”

The act of March 30, 1868, section 1, now section 191 of the Revised Statutes, was passed in order to settle the whole controversy, but not to repeal or impair the force of sections 248, 269, and 3675, which are taken from prior legislation. (Act Sept. 2, 1789, 1 Stats., 67; act March 3, 1809, 2 Stats., 535; act March 3, 1817, 3 Stats., 367; act March 3, 1849, 9 Stats., 396.) This construction gives effect to every section referred to. Any other would render one portion and one purpose of section 269 without effect, and violate the rule that a *repeal by implication* is not favored.

The authority of the Secretary and First Comptroller is shown by the prior legislation on the subject, which is also a part of the history.

The office of Second Comptroller was created by the act of March 3, 1817, (3 Stats., 366.) Before that time, all moneys appropriated for the Army and Navy were drawn from the Treasury by *warrants* of the Secretaries of the War and Navy Departments, respectively.

By the act of March 3, 1817, the duties of both the First and Second Comptrollers were prescribed as follows:

“SEC. 8. That it shall be the duty of the first comptroller to examine all accounts settled by the first and fifth auditors, and certify the balances thereon to the register; to countersign all warrants drawn by the Secretary of the Treasury, which shall be warranted by law. * * *

"SEC. 9. That it shall be the duty of the second comptroller to examine all accounts settled by the second, third, and fourth auditors, and certify the balances arising thereon to the secretary of the department in which the expenditure has been incurred; to countersign all warrants drawn by the Secretaries of the War and Navy Departments, which shall be warranted by law. * * *" (3 Stats., 367.)

It was subsequently deemed proper by Congress to transfer from the Secretary of War and the Secretary of the Navy to the Secretary of the Treasury, the duty to issue or grant warrants; and to transfer from the Second Comptroller to the First Comptroller the duty of *countersigning* warrants for the service of the War and Navy Departments. Accordingly an act was passed May 7, 1822, (Rev. Stats., 3673,) which provided:

"SEC. 3. That all moneys appropriated for the use of the War and Navy Departments, shall, from and after the day and year last aforesaid, [June 30, 1882.] be drawn from the treasury, by *warrants of the Secretary of the Treasury*, upon the *requisitions* of the secretaries of those departments, respectively, countersigned by the second comptroller of the treasury, and registered by the proper auditor;" and section 4 repealed so much of the act of March 3, 1817, as was repugnant to the foregoing provisions. (3 Stats., 689.)

This legislation imposed upon, or restored to, the Secretary of the Treasury the duty of granting all warrants, and upon or to the First Comptroller the duty of deciding, as to warrants so granted, whether they are "warranted by law." The Second Comptroller countersigns *requisitions* of the Secretary of War and Secretary of the Navy, but does not countersign any *warrants* granted by the Secretary of the Treasury. This change was designed *to secure uniformity*, and hence Congress gave or restored to the First Comptroller the power to decide as to the legality of all warrants.

It is true that section 273 of the Revised Statutes says, in terms, that it shall be the duty of the Second Comptroller "to countersign all *warrants* drawn by the Secretaries of War and of the Navy," but the word "*warrants*," as there used, must be understood as meaning "*requisitions*." (Secs. 277, 3673; 15 Op. Att.-Gen., 195.) The word "warrant" is incautiously transplanted into section 273 from the act of March 3, 1817, (3 Stats., 367,) without fully noting the change made by the act of May 7, 1822, (3 Stats., 689.)

The obvious meaning of the *language* employed in the statutes cited is, that when the First Comptroller is called upon to countersign a warrant, he is authorized to judge if it "be warranted by law." If the purpose of section 269 had been to require the First Comptroller to regard, in all cases, the balances certified by the Second Comptroller as *conclusive* of his legal obligation to countersign a warrant for the

payment thereof, why was it not simply declared to be his duty "to countersign all warrants drawn by the Secretary of the Treasury?" Why were the words "which shall be warranted by law" added? If the words "and evidence" had been added by Congress to the phrase "which shall be warranted by law," would they not authorize an inquiry as to *all* the facts? If so, then the words "warranted by law" authorize, at least, an inquiry as to all questions in respect of the legality of the payment proposed to be made.

The *usage* in the matter of granting and countersigning warrants to the Treasurer has been in conformity with this construction.

In an able opinion of Hon. H. F. French, Assistant Secretary of the Treasury, of April 16, 1877, it is said:

"I should claim it to be within the general supervising power of the Secretary to forbid the reopening of cases once decided, except upon his own written order. Though, if the Comptroller should rehear and certify a balance, it is somewhat doubtful whether the Secretary could nullify or disregard the certificate, if the proceeding were in other respects regular.

"It does not, however, necessarily follow that the Secretary cannot *withhold a warrant* in a proper case on a balance certified by the Comptroller.

"Among the instances in which it seems to me that the Secretary may properly withhold the warrant after a balance is certified are these:

"Where the proceeding appears to be illegal in form. As in an opinion of Attorney-General Taft of August 2, 1876, (15 Op., 139,) where it is held that, as section 191, R. S., requires that the balance shall be 'stated by the Auditor,' and it appears that it has not been examined by him, the proceeding is not in conformity to law, and the warrant should not issue. He holds that the examination by the Auditor is essential to the allowance of a claim, although the Comptroller has power to overrule and reverse or modify in any way the action of the Auditor.

"The Secretary, I think, may *withhold a warrant* when the appropriation out of which it is by law expressly made payable has been exhausted. By section 248, R. S., the Secretary shall 'grant all warrants for money to be issued from the Treasury, in pursuance of appropriations by law;' and so where there is clearly no appropriation out of which it can be paid.

"In a case where the accounting officers have manifestly certified the claim as due under a particular appropriation, which is sufficient in amount, and the Secretary is of opinion that such claim is not due under such appropriation, there may arise a conflict of jurisdiction between the Comptroller and the Secretary, for the decision of which I am unable to cite any authority."

The act of June 30, 1864, sec. 44, (13 Stats., 240,) authorized the Commissioner of Internal Revenue "to remit, refund, and pay back all duties erroneously or illegally assessed or collected, * * * by drafts drawn on collectors of internal revenue." The power of the

Commissioner to draw his drafts on collectors was repealed by act of March 3, 1865, (13 Stats., 483, sec. 3,) but the duty was left "to remit, refund, and pay back." (Rev. Stats., 3220.)

Hon. H. F. French, in the opinion cited, referring to the power of the Commissioner as to whether his approval of a refunding claim was final and conclusive, and also to the decision of the Court of Claims in Kaufman's case, (11 Ct. Cls., 659,) said:

"By section 269, Revised Statutes, it is the duty of the Comptroller to countersign all warrants drawn by the Secretary which shall be warranted by law; and it is the duty of the Secretary to withhold his signature from a warrant if there is no appropriation out of which it can be properly paid.

"The mistake of the court is in holding the decision of the Commissioner of Internal Revenue to be the final adjudication of the claim, and in not holding it to be a mere step in the system of internal-revenue laws, which provide a complete remedy in the case.

"Mr. Justice Strong, in the case of the Dollar Savings Bank *vs.* United States, (17 Wall., p. 237,) in discussing the effect of a decision of the Commissioner of Internal Revenue, says: 'In the first place, the decisions of the Internal-Revenue Commissioner can hardly be denominated judicial constructions.' The statute clearly recognizes the authority both of the Comptroller and of the Secretary in all cases of claims against the Government. (Sec. 191, R. S.) The decision of the Commissioner of Internal Revenue is *not made final or conclusive* by any statute; but it was *clearly within the province of the Comptroller* in this case to *decide whether the opinion of the Commissioner of Internal Revenue was or was not correct, both in law and fact.*" (Page 43.)

There are special statutes which, in particular cases, devolve on specified officers the duty of allowing claims, and which make the allowance by those officers in such cases conclusive on accounting officers, except when *some other* statute renders the allowance so made illegal. (Act February 21, 1823, (6 Stats., 280;) act March 1, 1823, (3 Stats., 771;) act March 3, 1849, (9 Stats., 414;) Rev. Stats., 48, 270, 3148.)

So salaries are generally fixed by statute. But in all other cases the proper accounting officers are made judges of the law and the facts, as stated by Mr. French. A statute in relation to the allowance of claims in the executive branch of the Government would have to be very explicit in its terms in order to be construed as imposing merely ministerial duties upon the accounting officers of the Treasury in respect of certifying balances for their payment.

The act of August 26, 1852, section 3, (10 Stats., 31,) prescribing the powers and duties of the Superintendent of the Public Printing, says: "He shall issue his certificate for the amount due to the public printer for such work as shall have been faithfully executed, *which certificate shall be made payable* to the public printer at the *Treasury*

of the United States, and shall not be assignable or transferable by indorsement or delivery to any third party. Said certificate of the superintendent shall be a *sufficient voucher* for the Comptroller to pass, and for the Treasurer, upon the order of the Second Comptroller, to pay the same." This language, construed by itself, would seem to make the Superintendent of Public Printing the judge of the legality and amount of the claim, account, or demand of the public printer for work done for the Government. It is quite as strong and comprehensive in its terms for the purpose of conferring jurisdiction upon the Superintendent of Public Printing, as the language of section 3220, Revised Statutes, is in relation to the jurisdiction of the Commissioner of Internal Revenue. Indeed, it is stronger and more comprehensive, for it is not said anywhere in the statutes that the allowance or certificate of the Commissioner of Internal Revenue "shall be a sufficient voucher for the Comptroller to pass" when he is examining an account for the refunding of internal-revenue taxes. Yet it has been held by high authority that the accounting officers of the Treasury were not, either as to law or facts, bound to accept the certificate of the Superintendent of Public Printing as conclusive on the merits of the case, or of the right to payment under it. Attorney-General Stanton, construing the act of August 26, 1852, referred to, said that the superintendent's certificate "is, therefore, nothing more than a private paper, and the Comptroller has not only the right, but it would be his duty, to inquire into the accuracy of the facts stated." (10 Op., 5.) And in a proper case he might direct the payment of a claim on evidence satisfactory to him, without the production of the certificate. (*U. S. vs. Robeson*, 9 Pet., 328.)

It is the right of every claimant for the refund of taxes erroneously or unlawfully collected to have his claim presented to the proper accounting officers of the Treasury "for their examination." Section 951, Revised Statutes, provides that "in suits brought by the United States against individuals, no claim for credit shall be admitted, upon trial, except such as appears to have been presented to the accounting officers of the Treasury *for their* examination, and to have been *by them* disallowed, in whole or in part. * * *" This provision is taken from the act of March 3, 1797. (1 Stats., 514.) This section implies jurisdiction in the accounting officers for the examination and disallowance of *any* claim against the United States; and the examination or disallowance by any other officers would not be sufficient.

This act has been held to apply to any person whomsoever, whether an official or private citizen, having a claim against the United States.

(United States *vs.* Jacob Barker, 1 Pa. C. C., 175.) It is clear that, under its provisions, there would be no right to prove a claim in set-off, upon the rejection of it by the Commissioner of Internal Revenue. The statute is in derogation of common-law and governmental prerogative; its provisions must, therefore, be strictly construed and be as strictly followed. It confers a right upon any person having a legal or equitable claim against the United States that did not before exist, and this right must not be taken away without the clearest intendment of law. If it be held that the decision of the Commissioner of Internal Revenue upon a refunding claim cannot be reviewed by the accounting officers, then the claimants may, in many cases, be deprived of this statutory right. Did Congress intend to give such effect to his decision? Certainly not. The provision for refunding, as it now exists, must be regarded as a well-ordered part of the fiscal system of the Government, and be construed so as to harmonize with all the parts of that system; which, taken as one body of law, clearly contemplates intelligent action by the proper accounting officers on all claims whatsoever that are adjudicated in the Department of the Treasury.

Any construction which would deny to the First Comptroller the right to judge, as to all warrants, whether they are "warranted by law," would, by application of the rule on which it was made, take from the Secretary the right to decide whether a warrant, in such a case as this, is "in pursuance of appropriations by law." If section 191 makes the balance certified by the Second Comptroller *conclusive* over one question, it must be so over both.

The right of the First Comptroller to judge whether a warrant is "warranted by law" has been asserted and, in proper cases, acted on, even as against judgments of courts.

In March and April, 1864, the military forces under the command of General N. P. Banks, and the naval force, commanded by Rear-Admiral Porter, made an expedition up Red river, in Louisiana. The naval force captured a large quantity of cotton, which, on returning, they brought with them, and libelled as prize in the United States district court for the southern district of Illinois. In June, 1868, the court decreed to the captors as military salvage in one case, \$42,704.70, and \$92,525.11 in another, and to the naval-pension fund, in the same cases, \$32,409.86 and \$27,212.68, which latter sums were paid into the Treasury. After this, in November, 1869, and May, 1870, the decrees were opened up, and a decree was made that the last two sums should be distributed as salvage to the captors, instead of being paid to the credit of the navy-pension fund.

On these decrees the Fourth Auditor stated an account, and the *Second Comptroller* certified said sums to be charged to the navy-pension fund and credited to prize-money.

The Attorney-General, in an opinion August 1, 1870, (13 Op., 299,) held that the Secretary of the Interior could not make a requisition for the transfer.

On 6th December, 1870, (13 Op., 348,) the Attorney-General reaffirmed this opinion.

February 5, 1875, (14 Op., 524,) another opinion was given to the same effect.

In the Forty-fourth Congress the Senate Committee on Naval Affairs reported, July 21, 1876, against the transfer.

July 27, 1876, (15 Op., 575,) the Solicitor-General, with the approval of the Attorney-General, decided in favor of the transfer.

September 11, 1876, the First Comptroller, in an elaborate opinion, held—

“*First.* That the naval officer of the Red River squadron had no personal interest in the captured cotton, or in its proceeds.

“*Second.* That at the time the amended decrees were made the court had no control over the fund, which was then regularly in the Treasury.

“*Third.* That the money having been paid into the Treasury, it cannot be withdrawn, except by an act of Congress. The proposed transfer should not be made.

“I conclude by saying that neither the Secretary of the Navy nor the Secretary of the Interior has the slightest control over the naval-pension fund; and that the Fourth Auditor and Second Comptroller are not authorized to inquire into alleged erroneous payments into the Treasury. That is a subject which belongs to the Secretary of the Treasury and the First Comptroller.”

The duties, in respect of warrants, prescribed by sections 248 and 269 of the Revised Statutes, are not merely *ministerial*; they require the exercise of judgment.

The *law* does not require the Auditor's statement of an account, or the *Second Comptroller's* certificate of balance due, to set forth the appropriation out of which it is to be paid. It does not in terms require the requisition, in such cases as this, to state the appropriation out of which it is to be paid; but the practice, as a matter of convenience, is to do so. The First Comptroller is *required by law* to keep an account of the appropriations. (Rev. Stats., 3675.) The Second Comptroller is not in terms required by law to keep such account; but, as a matter of fact, he does so for his own information. The Second Comptroller is not by law provided with the means of judging whether a warrant can issue. As to balances certified by the Second Comptroller, the *Secretary of the Treasury must, necessarily, judge* whether a war-

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rant for its payment is "in pursuance of appropriations by law." The First Comptroller, being required by law to decide whether warrants granted by the Secretary of the Treasury are warranted by law, has of necessity the right to inquire not only as to the existence or availability of an appropriation, but also as to all other facts, of whatever character, touching the whole merits of the claims on which the warrants are granted. This duty of the First Comptroller is judicial, not ministerial.

There is frequently great difficulty in deciding whether a particular claim falls within one or another of different appropriations, or whether there be any appropriation applicable to it. (Canal case, *ante*, 141; Bundy's case, *ante*, 184.) When it is determined that there was an appropriation applicable, but that it is exhausted, or carried to the surplus fund, the accounting officers of the Treasury are required to examine all such claims that may be brought before them within a period of five years; and the Secretary of the Treasury is required to report to the Speaker of the House of Representatives, at the commencement of each session of Congress, the amount found due to each claimant, whereupon, if an appropriation shall be made, the balances due are to be certified for payment. (Act June 14, 1878, sec. 4, 20 Stats., 130.)

The view that the Comptroller's duty in countersigning a warrant is judicial in character is fully sustained in principle by the Supreme Court, in *Decatur vs. Paulding*, (14 Pet., 515,) in which a claimant attempted by mandamus to compel the Secretary of the Navy to issue a warrant to pay a demand, and it was said that the proper court—

"Has the power to issue a mandamus to an officer of the Federal Government, commanding him to do a *ministerial act*."

"In general, the *official duties* of the head of one of the Executive Departments, whether imposed by act of Congress or by resolution, *are not mere ministerial duties*. The head of an Executive Department of the Government, in the administration of the various and important concerns of his office, is continually required to *exercise judgment and discretion*. He must exercise his judgment in expounding the laws and resolutions of Congress, under which he is from time to time required to act." (Sallu's case, *ante*, 232; Brown's case, 6 Ct. Cls., 171.)

The court further said, in the case quoted from, that the Secretary of the Navy (as the law then stood) "must have inquired into the condition of the Navy-pension fund, and the claims upon it, in order to ascertain whether there was money enough to pay all the demands upon it."

The authority of the Secretary of the Treasury, as the statute says, is "to grant, under the limitations herein established, all warrants." This is a limitation, first, as to the authority to grant—no warrant for payment of money out of the treasury shall be granted unless a bal-

ance be certified as due from the United States, and there is an available appropriation for such payment; and second, as to the effect of the grant—it shall not authorize the payment unless the warrant be countersigned by the First Comptroller, as being warranted by law. The duty to so countersign invests the Comptroller with a *quasi* judicial jurisdiction. There would be no limitation as to the effect of the grant if the action of the Comptroller were merely ministerial.

Numerous authorities might be cited to show by analogy that the Secretary of the Treasury in issuing, and the First Comptroller in countersigning, a warrant for payment of a balance certified by the Second Comptroller, act *judicially* in the respective duties assigned to them by law, and not *ministerially*. (Sallu's case, *ante*, 232, 233.) And this is decisive of the whole question. If section 191 of the Revised Statutes is conclusive that every balance certified by the Second Comptroller is payable, then the Secretary of the Treasury and First Comptroller must act *ministerially* in issuing and countersigning a warrant for payment; but this doctrine is denied in *Decatur vs. Paulding*, and in principle refuted in numerous other cases. It is clear that there is a right to refuse to grant a warrant in *some cases* in which the Second Comptroller may certify a balance due. The right to refuse is established, and no law limits the right of the Secretary to *judge* in any case whether there is authority to pay a balance certified; in other words, whether there is an available appropriation.

The Attorney-General, in Whiting's case, January 13, 1863, (10 Op., 435) held, upon facts very similar to those now under consideration, that a claim by a public officer for additional compensation could not be allowed; but that, *in proper cases*, "heads of Departments have a rightful authority to direct allowances to be made, or to reject claims for allowances, in settling and adjusting accounts relating to the business of their respective Departments; and that such directions and rejections ought to be conformed to by the Auditors and Comptroller * * * respectively." This qualified view does not in any way affect the questions now under consideration. (2 Op., 302; 5 Op., 630; 7 Op., 724; 8 Op., 297; 15 Op., 192; Flack's case, *ante*, 191.) In Whiting's case no reference is made to section 2 of the act of March 3, 1849, (9 Stats., 395,) now section 444 of the Revised Statutes, which provides that "the Secretary of the Interior shall sign all requisitions for the advance or payment of money out of the Treasury, upon estimates or accounts for expenditures upon business assigned by law to his Department; subject, however, to adjustment and control by the proper accounting officers of the Department of the Treasury."

This recognizes the control as to both *fact* and *law* by the accounting officers.

In the case of *United States vs. Kaufman*, 96 U. S., 567, it was held that the allowance made by the Commissioner of Internal Revenue on a claim for a refund of tax "raised an implied promise on the part of the United States to pay any amount that might actually be due the claimant." But this related only to the *amount allowed* in a case where there was no question of jurisdiction, or *legal bar* to defeat the claim. This was by force of provisions of law which do not affect the question now presented. The case rested on section 3426 of the Revised Statutes, which authorized the Commissioner of Internal Revenue to "make regulations for the *allowance* of" certain claims for stamps unnecessarily used, &c. It is not said that an allowance under this section concludes the right of the proper Auditor and First Comptroller to judge of and revise the action of the Commissioner, but, if it is conclusive, the only result is that claims of *this class* fall within the provision of a statute peculiar and special in its character. (See *Decatur vs. Paulding*, 14 Pet., 515; *Savings-Bank case*, *ante*, 194; *Flack's case*, *ante*, 191; *Davis' case*, *ante*, 261; *Butler's case*, *ante*, 26; *Providence-Hospital case*, *ante*, 79; *United States vs. Pugh*, 99 U. S., 270; *United States vs. Ross*, 92 U. S., 281; *United States vs. Jones*, 18 How., 96; *P. & T. R. Co. vs. Stimpson*, 14 Pet., 448; *Allen vs. Blunt*, 3 Story, 742; *Wilkes vs. Dinsman*, 7 How., 89; *Sheets vs. Selden*, 2 Wall., 177; 2 Op., 302; 3 Op., 663; 5 Op., 630; 7 Op., 724; 8 Op., 297; 10 Op., 435; 15 Op., 192; *Kaufman's case*, 11 Ct. Cls., 659; *Woolner's case*, 13 Ct. Cls., 355; *Greencastle Bank case*, 15 Ct. Cls., 225; *McKnight's case*, 13 Ct. Cls., 291; *Campbell's case*, 12 Ct. Cls., 470; *Roback vs. Taylor*, C. C. U. S., S. D. Ohio, 4 Int.-Rev. Rec., 170.) This subject is fully discussed in House Ex. Doc. No. 27, 2d Sess. 45th Cong., p. 43, &c.

The certificate of the First or Second Comptroller is not an operative judgment which, *per se*, authorizes a payment from the Treasury; it is not the *ne plus ultra*. This point is not reached until the *warrant for payment* is issued by the Secretary of the Treasury, and is countersigned by the First Comptroller, who, by every provision of law on the subject, acts *judicially*, and not at all *ministerially*. (*Sallu's case*, *ante*, 232.)

Notwithstanding what is said in *United States vs. Kaufman*, there are many reasons why the *allowance* of an amount of public money in the Treasury by a subordinate officer should not be regarded as final, or form the foundation for an action against the United States, *if there be questions of law* respecting its validity. That is, the *allowance* should not be *evidence* of a right of action in such case. Among the reasons are these: (1.) In those cases in which Congress intended an allowance made

by an officer to have such effect, the law, as already shown, has so declared. (Act March 3, 1849, sec. 41, 9 Stats., 414.) (2.) The laws giving the Auditors and Comptrollers authority to state and certify accounts are *general* in their terms, and other officers, in making allowances, do so subject to their provisions. No claim or account coming before the Executive Departments can be considered as *settled* or *adjusted* until it is finally passed upon by the proper accounting officers; and allowances by other officers must eventually take the form of a claim or of an item of an account, which is to be settled or adjusted by the accounting officers. (Rev. Stats., 191, 236, 269, 276.) (3.) The Secretary of the Treasury and the First Comptroller act *judicially*, not *ministerially*, in respectively granting and countersigning warrants for the payment of money from the treasury. (*Decatur vs. Paulding*, 14 Pet., 515.) It is clear, therefore, that section 191 interposes no objection to the right of the Secretary of the Treasury to decide whether a warrant in this case is in pursuance of appropriations by law, and does not take from the First Comptroller the right to decide whether payment is warranted by law.

In such case as this the vouchers are to be returned by the Second Comptroller to the Second Auditor, after they "have been *finally* adjusted." (Acts March 3, 1817, sec. 5, 3 Stats., 367; March 3, 1849, secs. 1, 5, 9 Stats., 395; Rev. Stats., 283, 462.)

The First Comptroller, as *incident* to his duty to ascertain whether warrants are "warranted by law," may require the production of all papers requisite for the purpose; and the Secretary of the Treasury, under the power to prescribe "regulations," may provide a mode for such production. (Rev. Stats., 161, 248.) The right to examine the papers is incident to and inherent in the power to determine whether a warrant is "warranted by law." The Secretary has incidental, if not express, authority to require the production of papers from which he may ascertain whether a warrant is in pursuance of appropriations by law; and if so, out of what appropriation a certified balance should be paid. (Rev. Stats., 161, 248, 250.)

When the Secretary of the Treasury, in such case as this, issues a warrant, he thereby affirms that it is in pursuance of appropriations by law. When the First Comptroller countersigns a warrant, he thereby *affirms*, under the responsibility of official obligations, that it is "warranted by law." (Rev. Stats., 269.) He is to ascertain if there be an appropriation applicable to it. (Rev. Stats., 3675.) The duty to so affirm carries with it, and the law which imposes it implies, an authority to ascertain all things which may be necessary in order to make a true affirmation. It is a familiar rule in the law

of official as of personal agency, that the *means* of executing a *duty* are a necessary incident of, and implied by, its existence. To say that an officer shall affirm a proposition of law as his judgment, is also to declare that he has the *means* of *forming* a judgment. He must search for the means where they exist. There he can go for them, or require them to be brought before him. When *his* judgment is required, he cannot accept the judgment of any other official. It is well settled that the power of judging cannot be delegated. It would be very unreasonable to suppose that the law requires the First Comptroller to affirm a warrant to be lawful, and leaves him without means to know the facts on which its legality depends. This would be to require him to decide blindly on questions which often require the most searching and discriminating legal inquiry.

Of what value would be the official signature of an officer thus required to blindly act? Why make so vain, so aimless a law as to require it? Is it to be supposed that Congress would, by law, require so unwise and even absurd a performance? Official sanctions are prescribed for public security, and to insure administration according to law and uniform in its operation. What public security could there be in an official sanction so given? The question here raised, and others closely allied to it, and no more difficult of solution, have given rise to conflicts of opinions among the ablest Attorneys-General and the judges of the highest courts.

It may be said that when the Second Comptroller has certified "a balance due," (Rev. Stats., 191,) his certificate furnishes the *fact*, which the First Comptroller must accept, on which to decide whether a warrant be authorized. This is true in so far that the certificate of the Second Comptroller, as to the evidence on which he made the allowance, is conclusive. If he find that a particular service has been rendered, such finding cannot be questioned elsewhere. If, however, the law contains no provision for making compensation for the rendition of the service, or forbids the allowance of such compensation, the certificate of the Second Comptroller that a balance is found due from the United States to the person rendering the service, is *not* conclusive. It is the province of the First Comptroller to decide whether the payment by the United States of the balance so certified to be due is "warranted by law;" and if he decide that it is not, it is his duty to refuse to countersign the warrant for its payment. The amount certified may be a legal demand; but, if there be no appropriation to pay it, a warrant cannot lawfully issue. If there was an appropriation, which is exhausted, that is a fact which the books of the Secretary and the First Comptroller must show, but which those of the Second Comptroller

are not required to show. If there never was an appropriation applicable, of course no warrant could be lawfully issued. (Canal case, *ante*, 141.) The question as to the appropriation arises after the balance is certified. It may be said there is no authority to certify a balance where no appropriation has been made. This, however, may not always be true. The salary of an officer may be due even though there be no appropriation to pay it. But if a balance be certified, nevertheless the question of law still arises whether a warrant can lawfully issue. If it was not designed that the First Comptroller should act and judge understandingly, why did Congress *change the law* which permitted warrants to be paid when countersigned by the Second Comptroller alone, and require the First Comptroller to countersign them? Plainly the law was changed in order to secure uniformity on questions of law, and to have an *additional sanction*, acting on all the sources of information on which the Second Comptroller acted in certifying balances. To secure this result the maxim might, if necessary, be applied, *Boni judicis est ampliare jurisdictionem*. If no additional sanction or safeguard was intended in requiring the First Comptroller to countersign warrants, why did the law require the First Comptroller to countersign warrants on balances which had already received the sanction of the Second Comptroller? Why have a First Comptroller act at all, as to such matters, if the act of the Second Comptroller is in *all* respects conclusive? If conclusive, this would, in effect, as to such cases, place the First Comptroller under the jurisdiction of the Second Comptroller. This could not have been intended. Such a doctrine did prevail at one time, (5 Op., 645;) but it has been discarded, as above shown.

The Second Comptroller is not required to countersign warrants in payment for balances certified by the First Comptroller on accounts stated by the First and Fifth Auditors, nor, in fact, to countersign any warrant; but the First Comptroller is required to countersign all warrants issued by the Secretary of the Treasury, including those for payment of balances certified by the Second Comptroller on accounts stated by the Second, Third, and Fourth Auditors. This shows that there was an intelligent and rational purpose in the law in requiring the First Comptroller to countersign *all* such warrants.

There is no conflict of authority. Every officer of the Government has duties to perform which are prescribed by law. (7 Wall., 676.) But the law has in many cases created a supervisory power.

In the judicial branch of the Government there are gradations of jurisdiction on questions of law until the highest court is reached. The

decision of the court of last resort is law. It settles all controversy. There is no inquiry beyond it.

The like order is as essential to the settlement of controversies in the executive as it is in the judicial branch of the Government. A similar gradation of jurisdiction and a final revisory power are established in the Treasury Department on questions of law arising in the fiscal operations of the Government and the system of public accounting.

The revisory authority of the First Comptroller is recognized in the provision for an appeal to him from the decision of the Sixth Auditor, (Rev. Stats., 270;) a provision necessary to the maintenance of uniformity in the legal principles finally determining all questions which arise in the fiscal operations of the Government, because the liabilities of the Post-Office Department are not as a rule paid from moneys in the Treasury on warrants granted by the Secretary of the Treasury and countersigned by the First Comptroller; and therefore the revisory jurisdiction was specially conferred.

There is an absolute necessity for one final authority in order to the determination of the validity of warrants. Without this authority there can be no uniformity in the application of the legal principles which govern the payment of claims. If, for example, the decision of the Second Comptroller is final on questions of law, then clerks in the Interior Department could, as in this case, be paid a compensation not pertaining to their office; while no such compensation would be allowed in a like case in the Treasury Department decided by the First Comptroller. When a claim arising in the service of a Department other than the Treasury has been allowed, and a balance is certified by the proper Comptroller in favor of the claimant, a requisition is to be made by the head of such Department on the Secretary of the Treasury to cause a warrant to issue for its payment. If the requisition should in such case be for more than the balance certified, and the Secretary of the Treasury should inadvertently issue a warrant for that sum, such warrant would clearly not be "warranted by law;" and it cannot be supposed that the First Comptroller would or could be required to countersign it. It is not to be presumed that Congress intended to organize discord, or to provide agencies which might establish opposite rulings and different principles of law in the Treasury Department as to payments to be made on warrants to be issued for the discharge of the public liabilities.

The First Comptroller may, after he has certified a balance, sometimes find that no warrant can be lawfully issued. His power and duty to pass on the warrant affords a *locus penitentiae* from which to correct mistakes. The warrant is in the nature of a writ of error *coram*

nobis. Such final power of review cannot fail to be salutary and promotive of justice. Furthermore, the First Comptroller may, upon the discovery of facts affecting the validity of a warrant which he has countersigned, recall it at any time before final payment, "and re-examine the settlement with a view to the correction of errors or mistakes, whether of law or of fact, therein." (15 Op., 198.)

The Second Comptroller, in certifying, as due and payable to Mr. Bender for compensation, an amount which exceeds the salary prescribed by law for the office held by him, acted without warrant of law; because no officer can authorize a payment which is unauthorized or prohibited by law. The allowance of such compensation is not within the jurisdiction of any accounting officer or head of Department until Congress expressly authorizes its payment or repeals the statutory prohibitions.

The Secretary of the Interior has authority to compensate the claimant by payment of his salary as clerk during the time he was in service in New York; and his proper expenses can also be paid, *but no more*.

The voucher presented by Mr. Bender is, for travelling expenses, \$21.60, and per diem, \$42. The Second Auditor included in his statement hotel-bills also, \$20. As this item was included without any claim being made therefor by Mr. Bender, and without a voucher, the amount was improperly allowed in his favor. (15 Op., 139.) A warrant to cover that item is not "warranted by law." The claimant is entitled to payment for travelling expenses, \$21.60, and for hotel-bills, \$20, when a proper voucher therefor has been presented, but not for any *per diem* or other compensation as special agent.

The papers will be returned to the Honorable Secretary of the Treasury, who will be advised to return them to the Second Auditor, so that the requisition of the Secretary of the Interior may be registered by the Auditor, as the law requires. And the Secretary of the Treasury will be further advised, that when the requisition so registered shall be received by him it should be returned, with the views of this office, to the Secretary of the Interior, so that the latter may, if he shall deem proper, again submit the whole subject to the Second Comptroller, under section 191 of the Revised Statutes; or, if not, that Mr. Bender may present a new account.*

TREASURY DEPARTMENT,

First Comptroller's Office, December 16, 1880.

*The views presented in the text introduce no new principle. (See Debates in Congress, vol 1, O. S., pp. 384, 400, 408, 412, 436, 636, 637; Works of Hamilton, vol. 5, p. 77; vol 7, p. 548.) They do not go so far in the assertion of jurisdiction as those of former Comptrollers.

In the annual report of Hon. R. W. Tayler, First Comptroller, made November 14, 1867, it is said:

"The examination and entry of the appropriation warrants on the books of the office, though these were but one hundred and forty in number, required a careful study and critical examination of every appropriation made by Congress, and, in fact, of almost every act passed; and the subject of transfer warrants sometimes involved the preliminary inquiry whether the transfer could be made, and at other times a discharge of *the unpleasant duty of refusing to authorize it, though asked by the head of a Department.*

"And when a warrant upon the Treasury is presented, an examination and DECISION, whether it is authorized by law, and whether an appropriation to meet it exists, must be made. Many of these warrants contain drafts upon a variety of appropriations, so that the number of warrants drawn is small compared with the number of drafts upon the Treasury embraced in them, and each of these drafts must have the same careful examination as a warrant drawn against a single appropriation requires." See McKee's case, 12 Ct. Cls., 504; McKnight's case, 13 Ct. Cls., 307.

So far as has been learned, no objection to the Comptroller's position was then or since made, though as to appropriations the Secretary has, nevertheless, authority to decide as mentioned in the statute.

In a letter addressed by Hon. R. W. Tayler, First Comptroller, to the Secretary of War, December 5, 1872, in relation to certain decisions previously made by the Comptroller, the views of the Comptroller were stated as follows:

"I now learn from a printed copy of 'General Orders No. 93,' issued by the Adjutant-General, November 2, 1872, that subsequently to the making of the decisions by the Comptrollers, to which I have referred, and after they had been communicated to the War Department, the Secretary of War obtained from Mr. Hill, Assistant and then Acting Attorney-General, an opinion bearing date October 24, 1872, in conflict with the decisions of the Comptrollers on both the points involved.

"I am at all times willing to treat an opinion of the Attorney-General or Acting Attorney-General with great respect, and to allow it such weight as it may justly be entitled to, when considering questions that come to this office for decision. * * *

"The decision of the question treated by the Acting Attorney-General belongs to the Comptrollers by virtue of the authority conferred upon them by law, whether viewed in connection with the general powers conferred upon those officers or with reference to the provisions of the act of May 18, 1872, only. That act provides 'that the proper accounting officers be, and hereby are, authorized and required, in the settlement of all accounts for the services of laborers, workmen, and mechanics employed by or on behalf of the Government of the United States' between two designated days, to 'settle and pay the same, without reduction,' &c.

"The power to act and to decide who are within these statutory provisions was thus conferred upon the Comptrollers; and no authority was given any other Department or officer to interpose between them and the execution of the law according to their best judgment of its import. * * *

In an elaborate and able decision, February 10, 1851, by Hon. Hiland Hall, Second Comptroller, on a question whether the allowance of a "claim by the Commissioner of Indian Affairs is binding upon the accounting officers, making it their duty to allow it, and to charge the payment to the appropriation designated by the Commissioner," it is said:

"I maintain that when an account or claim comes before the accounting officers for settlement or allowance, by whomsoever it may have been recommended, they have not only the power, but that it is their imperative duty, from which they cannot escape without a violation of their official oaths, to inquire into its legality, and if they deem its allowance illegal, to reject it. I further maintain that in the system of accountability prescribed by our laws, the authority to judge of the legality of expenditures made by or under the direction of the heads of Departments was conferred on the Auditors and Comptrollers, with the design and intention that it should be exercised, and should operate as a check upon unnecessary and improvident expenditures. * * *

"There are numerous acts of Congress in which special powers are conferred on others than the accounting officers, in a manner indicating very clearly the understanding of Congress, that but for such provisions the adjustments of the accounting officers would be conclusive."

On the 13th November, 1880, at a reception given in the Treasury Department to Hon. A. G. Porter, late First Comptroller, among other proceedings, Hon. John Sherman, Secretary of the Treasury, delivered an address, in which he said:

"My association in the Department with Governor Porter has been very pleasant indeed. I have had occasion to read many of his opinions, and in some cases to be overruled by him."

The claim in this case was as follows:

"The UNITED STATES,		"To JOS. T. BENDER,	DR.
1880.	For services and expenses as special agent, as follows:		
Aug. 11.	R. R. fare and sleeper to New York.....		\$9 50
	Baggage and self to depot		55
12.	" " " hotel in New York		50
15.	" " " depot " "		1 00
	R. R. fare and sleeper to Washington		9 50
16.	Baggage and self to residence.....		50
	Services, Aug. 12 to 15, incl., 4 days, at \$10.50.....		42 00

"I certify on honor that the foregoing account is correct and just; that the services were actually rendered as stated, and that the item of expenses as embraced therein were actually incurred and have been paid; that said expenses were necessary for the purpose stated in letters of the Hon. Secretary of the Interior and Commissioner of Indian Affairs, dated Aug. 11, 1880, copies herewith; that the journey was made by the shortest usually-travelled routes; that there was no unnecessary delay; that said journey was made with all practicable dispatch; that no part of the same was made upon a free pass; that it was impracticable to obtain sub-vouchers for all the items embraced in said account; that the different charges in detail therein have been taken from, and verified by, my memorandum, kept throughout the whole trip; that no part of said account has been paid; that there is due thereon to myself the sum of sixty-three and $\frac{60}{100}$ dollars; and that I have certified vouchers in duplicate.

"JOS. T. BENDER.

"Dated Washington, D. C., Aug. 16, 1880.

"One copy retained in Indian Office.

"E. S. WOOG,
"Examiner."

The statement and certificate in the case are as follow:

"No. 2008.

"Appropriation:

"Telegraphing and purchase of Indian supplies, 1881.....\$63 $\frac{60}{100}$ "

—
"TREASURY DEPARTMENT,
"Second Auditor's Office, September 29, 1880.

"I certify that there is due from the United States to Joseph T. Bender the sum of forty-one dollars and sixty cents, being the amount of his claim for expenses and per diem while on official business in New York, from August 11 to 16, 1880, to be paid to claimant, Indian Office, city, as appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

"O. FERRISS, Auditor.

"To the SECOND COMPTROLLER OF THE TREASURY."

—
"SECOND COMPTROLLER'S OFFICE.

"I admit and certify, this 30th day of September, 1880, a balance due claimant of sixty-three and $\frac{60}{100}$ dollars.

"W. W. UPTON, Second Comptroller."

The requisition in this case is as follows:

DEPARTMENT OF THE INTERIOR.

No. 1498.

"To the SECRETARY OF THE TREASURY.

"SIR: Please cause a warrant, payable out of the under-mentioned appropriations, for the sum of sixty-three dollars and sixty cents, to be issued in favor of



Joseph T. Bender, Indian Office, Washington, D. C., being the amount due him on settlement, as per certificate of the Second Comptroller, No. 2008.

"Given under my hand, this 1st day of October, 1880.

"A. BELL,
"Acting Secretary of the Interior.

=====
"\$63.60.
=====

"Countersigned, Oct. 1:

"JAS. S. DELANO,

"Acting Second Comptroller.

"Registered:

"_____,
"Acting 2d Auditor.

"Appropriation.

"Telegraphing and purchase of supplies, 1881.....\$63.60"

A brief outline of the general mode of transacting business in the Department of the Treasury will be of some service in considering the questions presented in the foregoing opinion. (McKnight's case, 13 Ct. Cls., 229; McKee's case, 12 Ct. Cls., 504.)

All public moneys, except those derived from the postal revenues, are drawn from the Treasury upon warrants issued by the Secretary of the Treasury, countersigned by the First Comptroller, pursuant to requisitions from the heads of the several other Executive Departments, except for the service of the Treasury Department, for which warrants are drawn upon requisitions from the disbursing officers of the Department. (Rev. Stats., 369, 444, 3673, 3677.)

The *postal* revenues, in the custody of the Treasurer, are not subject to the warrants of the Secretary of the Treasury, but to those of the Postmaster-General, countersigned by the Auditor of the Treasury for the Post-Office Department [the Sixth Auditor.] (Rev. Stats., 407, 408, 3674.) Money appropriated for salaries and *contingent* expenses of the Post-Office Department are subject to the Secretary's warrants. (Rev. Stats., 176, 396, 414.)

Appropriations made by Congress to supply *deficiencies* of postal revenues are drawn from the general fund in the Treasury, in favor of the Postmaster-General, by warrant of the Secretary of the Treasury, countersigned by the First Comptroller, and are placed to the credit of the Post-Office Department on the books of the Treasurer, where they are subject to warrants of the Postmaster-General. (Rev. Stats., 248, 396.)

All money drawn from the Treasury is either for (1) *ADVANCES* to public officers, which must subsequently be accounted for, or (2) *PAYMENT OF "BALANCES"* which have been found due from the United States on the adjustment of accounts. The term "balances" comprehends all sums found due from the United States after adjustment.

I.—*ADVANCES* are made, by authority from the President, (*ante*, p. 203,) to disbursing officers in the civil service, to such military and naval officers as may by law be authorized to disburse the same, to acting engineers or inspectors of the Light-House Service, to disbursing officers authorized specifically by statute, and to the bankers of the United States in London. (Rev. Stats., 3648.)

The following is a specimen of requisition for an *advance*:

"ACCOUNTABLE, } "WAR DEPARTMENT.
No. 250, }
REQUISITION. }

"To the SECRETARY OF THE TREASURY.

"SIR: Please to cause a warrant for fifteen thousand dollars to be issued in favor of Assistant Treasurer U. S., New York city, to go to the credit of Major Wm. Smith, paymaster U. S. A., present, for which sum he is to be held accountable. Bond dated April 21, 1879. To be charged to the under-mentioned appropriation.

"Given under my hand, this 3d day of December, 1880.
\$15,000.

"ALEX. RAMSEY,
"Secretary of War.

"Countersigned, December 4, 1880:

"JAMES S. DELANO,

"Acting Second Comptroller.

"Registered 6A:

"O. FERRISS,

"Second Auditor.

"Appropriation: 'Pay of the Army, 1881,' \$15,000."

In some cases, before a warrant is issued, the accounting officers and the Register of the Treasury are called upon to show the condition of an officer's account, as follows:

"OFFICE OF THE SECRETARY OF THE TREASURY,
Division of Warrants, Estimates, and Appropriations. }
Form 97.

"Advance of
\$1,000
Recommended.

"TREASURY DEPARTMENT,
"Office of the Secretary, Warrant Division, November 26, 1880.

"To the FIRST AUDITOR, REGISTER, AND FIRST COMPTROLLER.

"GENTLEMEN: I have the honor to hand you herewith a requisition for the advance of money to ———, on account of his expenditures, and for which he is to be charged and held accountable.

"The Auditor will please give the number of the last adjustment, the amount of vouchers received since it was made, and any other information in his possession which will assist the Comptroller in determining the propriety of recommending the advance.

"The Register will please give the balance due to or from the United States on the adjustment above referred to, what advances have been allowed since it was made, and any other information in his possession which will assist the Comptroller in determining the propriety of recommending the advance.

"The Comptroller will please give the date and the amount of bond, and append his recommendation in reference to the advance.

"By order of the Secretary:

"W. F. MACLENNAN,
"Chief of Division."

"H. C. D. FIRST AUDITOR'S OFFICE, November 26, 1880.

"Last settlement, 2d qr., 1880. Report No. ———, dated ———. Vouchers on hand amounting to \$——.

"H. K. LEAVER,
"Acting First Auditor."

"REGISTER'S OFFICE, Nov. 26, 1880.

"Amount due, \$——, per above report. Advances since, \$——.

"H. C. P.

"J. H. BEATTY,
For Register."

"J. M. W. FIRST COMPTROLLER'S OFFICE, November 29, 1880.

"Bond dated ———, for \$——. I recommend the advance of \$1,000 on the within requisition from the appropriation, ———.

"WM. LAWRENCE,
"First Comptroller.
"A. J. C."

"Advances" are made to the Treasurer of the United States for Government bonds and coupons paid, after the payment, but before accounts are rendered. (Rev. Stats., 305, 311, 3698; act June 20, 1874, 18 Stats. 110, sec. 5; Police case, *ante*, 74.)

The Treasurer makes payment of over-due bonds and coupons as presented, and is reimbursed by warrants issued on his requisitions, with the amount of which he is charged on the books of the Register. He renders accounts monthly for most of such payments, and quarterly as to the residue. His accounts are audited by the First Auditor and certified by the First Comptroller. All disputed questions of titles as to ownership of bonds, &c., are referred to the latter officer. These questions are referred to the First Comptroller for his decision in advance of making payment, because the First Comptroller is required to pass on the accounts of the Treasurer. (Rev. Stats., 305, 311, 3698.) Very difficult questions often arise as to bonds. (Putnam's case, *ante*, 209; Sallu's case, *ante*, 215; Klink's case, *ante*, 243.) The same may be said of checks and drafts on the Treasurer and Assistant Treasurers. The accounts of disbursing officers also require the approval of the First Comptroller. (Rev. Stats., 269.) They are passed on primarily by the First or Fifth Auditor, or Commissioner of the General Land Office.

II.—"PAYMENTS" are made as follows:

1. Of "balances" certified by the First Comptroller on accounts which have been stated and reported to him by the First and Fifth Auditors and the Commissioner of the General Land Office. (Rev. Stats., 191, 236, 248, 269, 277, 305, 456.)

H. Ex. Doc. 81—24

2. Of balances certified by the Commissioner of Customs on accounts stated by the First Auditor. (Rev. Stats., 191, 236, 317.)

3. Of balances certified by the Second Comptroller on accounts stated by the Second, Third, and Fourth Auditors. (Rev. Stats., 191, 236, 273, 277, 444, 3673.)

A requisition for payment of a balance is in the following form :

"DEPARTMENT OF THE INTERIOR.

"No. 1057.

"To the SECRETARY OF THE TREASURY.

"SIR: Please cause a warrant, payable out of the under-mentioned appropriation, for the sum of one hundred and forty dollars, to be issued in favor of R. B. Currier, 31 West 38th street, New York city, being the amount due him on settlement as per certificate of the Second Comptroller, No. 2395.

"Given under my hand, this 7th day of December, 1880.

**"C. SCHURZ,
"Secretary of the Interior.**

"\$140.

"Countersigned:

"JAMES S. DELANO,

"Acting Second Comptroller.

"Registered 9:

"O. FERRISS,

"Second Auditor."

The several modes above stated, including warrants of the Postmaster-General, embrace all the modes for withdrawing money from the Treasury.

MONEY IS PAID INTO THE TREASURY by being deposited with the Treasurer of the United States, or to his credit with an Assistant Treasurer, or a designated depository. The depositor is required to state the particular account upon which the deposit is made, and he receives a certificate in duplicate, or triplicate, setting forth the facts, from the officer who takes the deposit. One of the certificates, the one marked "original" for all money except postal revenue, is forwarded by the depositor to the Secretary of the Treasury, who, when the account of the depository is received and examined, (such accounts are rendered weekly to the Secretary, and also to the Treasurer,) issues his warrant "covering" the money into the Treasury to the credit of the proper account. (Rev. Stats., 3593, 3615-3618, 3621, 3641-3644.)

All receipts for money received as above must be indorsed upon warrants signed by the Secretary of the Treasury, without which warrant, so signed, no acknowledgment for money received into the public Treasury shall be valid. (Rev. Stats., 305.)

Deposits of postal revenue are treated in the same manner as deposits on other accounts, except that the certificates are forwarded by the depositor to the Third Assistant Postmaster-General, and are brought into the Treasury by warrants of the Postmaster-General, countersigned by the Sixth Auditor. No credit is allowed until such warrant has been issued. (Rev. Stats., 407, 408.)

The following is a sample of a covering warrant:

OFFICE OF THE SECRETARY OF THE TREASURY,
Division of Warrants, Estimates, and Appropriations. }
Form 37.

TREASURY DEPARTMENT.

MISCELLANEOUS. To JOHN PARKER, U. S. Marshal, W. Dist., Michigan:

[SEAL.]

**Repay covering
warrant.**

No. 1589.

\$2,551 05.

Pay to the Treasurer of the United States, to be credited to the appropriations named in the margin of this warrant, two thousand five hundred and fifty-one dollars and five cents, deposited on account of moneys heretofore advanced to you, and with which you are now to be credited. For so doing this shall be your WARRANT.

[SEAL.] Given under my hand and the seal of the Treasury Department, this 30th day of September, in the year of our Lord one thousand eight hundred and eighty, and of Independence the one hundred and fifth.

**H. F. FRENCH,
Assistant Secretary.**

APPROPRIATIONS.

1880. Fees of jurors, United States courts.....	\$2, 195 60
1880. Fees of witnesses, United States courts.....	355 35
1880. Fees and expenses of marshals, United States courts	10
Deposited with City National Bank, Grand Rapids, Michigan, August 3, 1880.	
	<hr/> 2, 551 05 <hr/>

Countersigned: WM. LAWRENCE,
First Comptroller.

Registered: W. P. TITCOMB,
Acting Register.

OFFICE OF THE
TREASURER OF THE UNITED STATES.
Received October 9, 1880:
A. U. WYMAN,
Ass't Treasurer.

IN THE MATTER OF PAYING COMPENSATION FOR PREPARING AND EDITING THE SUPPLEMENT TO REVISED STATUTES OF THE UNITED STATES.—RICHARDSON'S CASE.

1. The joint resolution of June 7, 1880, (21 Stats., 308,) which declares that for the services of a party named for editing the supplement to the Revised Statutes, including all clerical work necessary to complete said work, "there shall be paid to said editor the sum of five thousand dollars," does not make an *appropriation* of the money for such payment.
2. A "private-relief act," which determines a sum due to a party named and directs its payment, will generally be deemed as making the requisite appropriation.
3. But an act authorizing services to be performed *in futuro*, and especially if the performance thereof must or may require such time as would render an ordinary present *annual* appropriation unavailable by reason of the act of June 14, 1878, (20 Stats., 130,) will not generally be deemed as making an appropriation, even when declaring that a specified sum shall, after the full performance, be paid to a person designated. Permanent specific appropriations cannot generally arise by implication.
4. Such act, declaring that a specified sum shall be so paid, is designed to *fix the amount of compensation*; and no other purpose, such as that of *making an appropriation*, can be assigned to it (1) in the absence of the usual words of appropriation, or (2) when at its date no immediate necessity for an appropriation existed.
5. When an act of Congress declares that an officer named shall be paid a fixed sum for services therein authorized to be performed by him and not connected with his office, he is lawfully entitled to the sum fixed after full performance, notwithstanding the provisions of the act of June 20, 1874, (18 Stats., 101, 109,) and sections 1763, 1764, and 1765 of the Revised Statutes. (See section 1835, R. S.)
6. Although section 1765 of the Revised Statutes denies to an officer in any branch of the public service the right to receive additional pay or compensation beyond his official salary "for any * * * service * * * whatever," unless it is "authorized by law," and "the *appropriation* therefor explicitly states that it is for such additional pay;" yet, a law which *does not make an appropriation*, may except a case from the operation of that section and of the act of June 20, 1874. (18 Stats., 101, 109.)

7. The claim for compensation under the joint resolution of June 7, 1880, for preparing and editing the supplement to the Revised Statutes, is so excepted.

The "joint resolution to provide for the publication and distribution of a supplement to the Revised Statutes," approved June 7, 1880, provides—

"That the supplement to the Revised Statutes, embracing the statutes general and permanent in their nature passed after the Revised Statutes with references connecting provisions on the same subject, explanatory notes, citations of judicial decisions, and a general index, prepared by William A. Richardson, be stereotyped at the Government Printing Office; and the index and plates thereof and all right and title therein and thereto shall be in and fully belong to the government for its exclusive use and benefit.

"* * * that for preparing and editing said supplement, including indexing and all clerical work necessary to fully complete said work, including the legislation of the Forty-sixth Congress, there shall be paid to said editor the sum of five thousand dollars. * * *

"The publication herein authorized shall be taken to be prima facie evidence of the laws therein contained in all the courts of the United States and of the several States and Territories therein; but shall not preclude reference to, nor control, in case of any discrepancy, the effect of any original act as passed by Congress: *Provided*, That nothing herein contained shall be construed to change or alter any existing law."

The clerk of the Committee on the Revision of the Laws of the House of Representatives states, by letter, that he is directed by the committee to ascertain whether or not the First Comptroller will pay the money mentioned in this joint resolution to the Hon. William A. Richardson, "when the work is completed, without further legislation."

This inquiry is doubtless made in view of two facts: (1) that there is no appropriation to make the payment mentioned, unless this resolution makes it; and (2) that the Hon. William A. Richardson has been, since 1874, and is now, a judge of the Court of Claims.

—

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

The Constitution provides that "no money shall be drawn from the Treasury but in consequence of appropriations made by law." (Art. 1, sec. 9.)

The question therefore arises, in this case, whether the joint resolution of June 7, 1880, (21 Stats., 308,) makes an appropriation for the payment of the compensation which it fixes for the services therein mentioned.

It is clear that it does not make such an appropriation.

The principles on which this determination is made have been so fully stated in analogous cases, in this volume, that it is unnecessary

to do more than refer to them: Audit case, 37; Tillamook case, 138; Canal case, 141; Bundy's case, 184.

I.—The joint resolution gives to Judge Richardson a right to payment when his work is completed, and it is his authority to proceed with and complete the work specified. By its title and provisions it is general and special legislation, with no indication of a purpose to make an appropriation. It contains sundry provisions for various purposes, only some of which are quoted above. It may have been deemed by Congress inexpedient to make an appropriation for payment of the compensation until the work should be completed; thus reserving a right to judge as to the question of completion. No provision is made for payment in instalments *pari passu* with the progress of the work; and the time for an appropriation had not been necessarily reached when the joint resolution was passed.

There are cases somewhat analogous.

The statute fixes the compensation of officers of the Army, and then declares that "the sums hereinbefore allowed shall be paid in monthly payments by the paymaster." (Rev. Stats., 1261, 1268; see secs. 1188, 3662.) But this has never been regarded as an appropriation of the requisite money. It merely prescribes the periods for payments.

A "private-relief" act of Congress, which determines a sum due and directs its payment, without using explicit words of appropriation, will generally be held to make an appropriation, because the manifest purpose is to *pay* without delay a sum *due*; and nothing further is to be done. But an act authorizing services to be performed *in futuro*, and of which the performance must or may require time running beyond the current fiscal year, or even two years thereafter—when unexpended annual appropriations must be covered into the Treasury—will not generally be deemed as making an appropriation, even when declaring that a specified sum shall, after full performance, be paid to a person designated. In this case, the clause which declares that "there shall be paid to said editor the sum of five thousand dollars" has a *purpose*; for, besides declaring who is to be the payee, it fixes the *amount* of the compensation. The fact that the *usual* words employed in making an appropriation are omitted shows that the joint resolution is not to be so construed as to superadd another purpose. This is especially the case when an immediate appropriation is, or may be, unnecessary. The general policy of making permanent specific appropriations, which may run for long periods, is discouraged by the purpose manifested in the acts of June 20, 1874, (18 Stats., 110, sec. 5,) and of June 14, 1878, (20 Stats., 130, sec. 4.)

If the joint resolution now in question makes an appropriation, such appropriation is "permanent and specific." The language of the resolution does not render it clear that Congress intended to make a permanent and specific appropriation; and if such an intention be attributed, it must arise by construction or implication. This form of appropriation cannot generally arise by implication. (Canal case, *ante*, 141.) The act of June 15, 1880, (21 Stats., 210, 216,) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1881, appropriates "for expenses of editing and distributing the laws enacted by the Forty-sixth Congress, and for the expenses of editing and distributing the Statutes at Large of the Forty-sixth Congress, three thousand five hundred dollars." This does not apply to the services now under consideration.

II.—The beneficiary named in the joint resolution of June 7, 1880, is not prohibited by reason of his official position from receiving the compensation therein authorized for performing the service of preparing and editing the supplement to the Revised Statutes.

Section 1765 of the Revised Statutes provides that—

"No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation."

The act of June 20, 1874, (18 Stats., 101, 109,) provides—

"And hereafter it shall be unlawful to allow or pay to any of the persons designated in this act any additional compensation from any source whatever.

* * * * *

"That no civil officer of the Government shall hereafter receive any compensation or perquisites, directly or indirectly, from the Treasury or property of the United States beyond his salary or compensation allowed by law: *Provided*, That this shall not be construed to prevent the employment and payment by the Department of Justice of district attorneys, as now allowed by law for the performance of services not covered by their salaries or fees."

The Revised Statutes (section 1765) deny to an *officer* in any branch of the public service the right to receive any additional pay or compensation beyond his official salary "for any * * * service or duty whatever," unless on two conditions: that (1) "the same is authorized by law," and (2) "the *appropriation* therefor explicitly states that it is for such additional pay," &c.

The first condition precedent to a right of payment is in this matter

complied with; that is, the service is "authorized by law"—the joint resolution of June 7, 1880.

The second condition—that there shall be an *appropriation* act explicitly stating "that it is for *such* additional pay;" that is, pay to a designated *officer*—is not fulfilled.

If section 1765 were a provision in the Constitution controlling the power of Congress, it may be that the additional pay to an officer could only be authorized in an *appropriation* act. But this section, like all other acts of Congress, may be repealed or modified, or *a given case may be excepted from its operation*, by a subsequent act of Congress, whether an appropriation or other form of act. This necessarily results from the power of Congress to repeal or modify statutes generally. When an act of Congress, as the joint resolution of June 7, 1880, declares that an officer named, or otherwise sufficiently designated, shall, for a given service, be paid a sum prescribed, this necessarily excepts the payment so to be made from the operation of that clause of section 1765 which requires the *appropriation* act to explicitly state "that it is for such additional pay, extra allowance, or compensation."

It will generally require clear language to create an exception to a positive, explicit provision of law. This is especially the case when the language to which the intention is ascribed of making an exception to the provision of section 1765 is not employed in an act avowedly making an appropriation. Doubtful words should not be construed to create such an exception, because a law which makes an exception is *pro tanto* a repeal. If not declared in express terms to be intended as a repeal, the words will effect the repeal only by implication; and repeals by implication are not favored. But an exception may be created as well by a general or special law, which does not make an *appropriation*, as by one which does.

When the services required of Judge Richardson shall have been performed, and an appropriation shall be made for the payment of the compensation therefor, he may then be lawfully paid.

TREASURY DEPARTMENT,

First Comptroller's Office, December 17, 1880.

IN THE MATTER OF THE AUTHORITY OF THE COMPTROLLER OF THE CURRENCY TO ALLOW AS AN OFFSET, FROM DIVIDENDS DUE TO THE UNITED STATES, A CLAIM UPON THE GOVERNMENT BY THE RECEIVER OF A NATIONAL BANK.—RECEIVER'S CASE.

1. When a National Bank has passed into the hands of a receiver under the national banking law, and dividends are declared from its assets by the Comptroller of the Currency in favor of the United States, the amount thereof must be covered into the Treasury, and cannot be appropriated to any other purpose, either under an order of court or otherwise.
2. The Comptroller of the Currency has no authority to allow or pay a claim against the Government in favor of the receiver of a National Bank.
3. Section 5234 of the Revised Statutes does not authorize any officer to compound or compromise a claim against the Government, nor does it give authority to any court to make an order for such purpose.
4. Neither the United States nor any officer thereof can be compulsorily made a party in any court for such purpose.
5. Money or property lawfully in the hands of executive officers of the Government is not subject to judicial control, unless such control be authorized by statute. Nor can such officers be made amenable to judicial control or action by reason of such custody, or the disposition they may make of the money or property in good faith in pursuance of authority given by law, notwithstanding they may err in judgment.
6. Money in the Treasury of the United States, under color of authority as money of the Government, cannot lawfully be taken therefrom except in consequence of appropriations by law.
7. Whether the Government is a preferred creditor in a claim against a National Bank in the hands of a receiver—*quære?*

Early in May, 1867, an investigation of the condition of the office of the Assistant Treasurer of the United States in New Orleans was ordered by the Secretary of the Treasury, and at the same time the Comptroller of the Currency ordered an investigation of the affairs of the First National Bank of that city. John J. Knox and J. F. Meline were appointed special agents for these purposes.

On the evening of May 11, 1867, the special agents at New Orleans had ascertained that there was a deficit of \$1,077,079.47 in the funds of the Assistant Treasurer, Wm. R. Whitaker.

Whitaker had held the office only since September 19, 1866. Thomas P. May was his immediate predecessor, having held the office from November 4, 1863, to September 19, 1866; and most, if not all, of the defalcation occurred while May held the office; but Whitaker had not disclosed this fact.

In 1866 and 1867, Thomas P. May was one of the directors of the First National Bank of New Orleans; was its president from September, 1866, to April, 1867; during all that time owned some 1,400 shares of its stock, and chiefly controlled and directed its business.

The special agents commenced, on the evening of May 12, 1867, an examination of the bank, and on and after the next day the officers of the bank transacted no business except under their supervision, or as by them ordered or permitted; all being present in the bank during the transaction of business. This supervision continued until the bank formally passed, May 27, 1867, into the hands of the receiver, the Hon. Charles Case. The receiver was appointed by reason of the *pro forma* protest for non-payment, May 16, 1867, of one of the circulating notes of the bank. (Rev. Stats., 5226, 5227.) The bank was hopelessly insolvent.

On the morning of May 13, the books of the bank showed to the credit of said T. P. May, as depositor, a balance of \$315,879.10; but from examinations then and before that time made by the special agents, these were aware that he was indebted to the bank as hereafter stated. Early on the morning of May 13, 1867, Mr. May drew his check on the bank for the whole of said nominal balance, (\$315,879.10,) payable to the order of T. P. May & Co. This check he indorsed in the name of the company, and delivered to Mr. Knox, to apply on his defalcation as assistant treasurer. The indorsement is dated May 14, but Mr. Knox says it was delivered to him on the 13th. Prior to such delivery, Mr. May requested the acting cashier, Louis Meig, to certify said check to be good; but Mr. Meig refused, assigning as reasons for his refusal that he did not know what sum, if any, was due to May; and that he no longer had the power to certify paper, as his rights and powers had been superseded by the action of the special agents. The president of the bank, D. B. Forbes, was absent; but after this refusal of Meig to certify as requested, the *receiving-teller* of the bank wrote the word "good" on the face of said check and signed his name to it as "teller." The check was thus certified when delivered to Mr. Knox.

While investigating the office of Assistant Treasurer Whitaker, the special agents found among his papers another check of the same T. P. May upon the First National Bank, dated February 15, 1867, for the sum of \$80,000, to the order of May and by him indorsed. Apparently, Whitaker had counted it as part of his cash on hand. There is no evidence that it had ever been presented to or accepted by the bank. This check was held on Monday morning, the 13th of May, by the special agents. Very soon after this, and prior to May 16, the special agents took from the vault of the bank, with the sanction of the cashier, all the cash

there found, consisting of currency and gold, aggregating \$94,000 after the gold had been converted into currency, and removed the same to the assistant treasurer's office, (of which they also had charge,) where they deposited it as money of the Government in the hands of the assistant treasurer. They drew \$80,000 of this amount in full payment of the above-mentioned check of T. P. May; and the residue, \$14,000, they drew on the other check, on which it was credited. The whole sum of \$94,000 thus went to the credit of the assistant treasurer in his account with the Treasurer of the United States, and is therefore in the Treasury. It is in the Treasury because it paid a portion of the sum due from the assistant treasurer to the Treasurer for advances previously made by the Treasurer, or for money collected for him which had been previously in form covered into the Treasury. There is yet against the assistant treasurer a balance of \$680,891.53. The check for \$80,000 was charged up on the books of the bank to the account of T. P. May before the receiver was appointed. (See vol. 18, Correspondence, March 1870, to July 1870, Office Secretary Treasury.)

Among the assets of the First National Bank which came into the hands of the receiver was T. P. May's "acceptance" of a sixty-day time-bill drawn upon him, in favor of the bank, by A. C. Graham, for \$100,000, which matured June 9, 1867. There was also a note of one M. T. Steele, for \$50,000, payable to the order of said May, by him indorsed, and discounted by the bank for his benefit, which fell due June 19, 1867. In 1866 and 1867, Mr. May was a copartner in a street railroad company in New Orleans. The copartners were *May, Graham & Beauregard*. They had a lease of the Carrollton Railroad.

In September, 1866, Mr. May executed to the bank a note for \$40,000, to which he signed the name of Beauregard, "per pro. T. P. May," to cover an overdraft of the street-railroad partnership. This note was overdue and unpaid when the receiver took possession.

In March, 1867, Mr. May drew on Graham in New York, at forty-five days' sight, a draft for \$125,000, in favor of the bank, to cover another overdraft of the partnership. On the 13th May, 1867, the partnership had overdrawn by \$72,008.89 their account in the bank.

Mr. May had verbally promised the bank to pay all these sums. He directed the bank officers not to use the draft on Graham except to apparently cover the overdraft, so that a bank examiner would not know of the overdraft. The two notes and the overdraft account came into the hands of the receiver uncollectible.

On May 11, 1880, the receiver presented to the Comptroller of the Currency an account, as follows:

THE UNITED STATES,

In account with FIRST NATIONAL BANK OF NEW ORLEANS, LA.,
1867. DR.

May 13. To currency and gold drawn from said bank by
special agents of the Treasury Department U. S.,
on certain checks of T. P. May, but in excess of
the liability of said bank to said May, as was sub-
sequently ascertained. \$94,000
To interest on above amount, at 5 per cent.

With this the receiver submitted requests:

1. That the Comptroller of the Currency, having in his hands \$65,826.40 of dividends retained from the assets of the bank, would, instead of applying this sum as dividends due the United States by reason of the payment of judgments as shown in the letter of the Comptroller of the Currency of July 23, 1880, hereafter set out, "compensate" (offset) it against the claim of \$94,000 above, and distribute it in dividends to creditors of the bank other than the United States.

2. That the Comptroller of the Currency should agree to a *compromise* which would allow the receiver to accept "the sum withheld on said dividends (\$65,826.40) in full of the claim now made" against the United States, and adding that "such a compromise would only be valid when sanctioned by a competent court." (Rev. Stats., 5234; Matter of Platt, 1 Benedict, 534; An. Rep. Compt. Currency, 1880, p. 75.)

3. He suggested that, "as to a matter so eminently just, Congress, if asked, would undoubtedly grant relief by authorizing the reference of the matter to the Court of Claims under a special statute, directing that body to disregard the plea of the statute of limitations." (U. S. *vs.* McKee, 1 Otto, 442.)

Hon. *Charles Case*, the receiver, submitted an argument to the Comptroller of the Currency, an abstract of which is as follows:

1. The bank teller had no authority to certify the check for \$315,879.10 as "good." This is shown by affidavits; and his powers ceased by the authority exercised by the special agents. This check was no legal warrant for the drawing of the funds.

As said certification was void, and as said bank was known to be insolvent, and was, in legal effect, suspended when said check was delivered, it was no sufficient voucher for the drawing of money thereon from said bank; nor did said check operate to make the Government in any sense the creditor of said bank. At most it could only confer upon the United States the right, finally, to receive any dividend that otherwise might be found due to May after full adjustment of all his liabilities to said bank. In other words, as a check it could not bind the bank, because not accepted; but it might operate to assign *May's interest*, if he had any. The cash removed by the agents they assumed to draw in part on said check for \$80,000; but it is to be borne in mind that, as said check had never been accepted, the bank, even if it had then been doing usual

banking business, was under no legal contract to the payee or holder to pay it; and as the bank was then, in fact, suspended, the rights and powers of said special agents therein were, and could only be, those of a receiver, surely not in excess of such as the receiver of an insolvent national bank may exercise. Their action could not change the ownership of said funds, nor cut off the ultimate right of all creditors of said bank to share *pro rata* in the avails of all its assets.

2. May was legally and equitably indebted to the bank in a sum greater than the balance apparently to his credit in bank, and hence the \$94,000 could not be lawfully appropriated on said checks in view of the insolvency of the bank and the control exercised by the special agents.

In regard to these liabilities, I quote what was said in my letter to the Comptroller of the Currency of August 16, 1873, viz:

"When the bank suspended, May was as hopelessly bankrupt as was the bank. Being thus insolvent, it was the right of the bank, *then and there*, to force him into an assignment, either under the *State Code* or under the United States bankrupt law, (certainly under the former,) and in either event the bank had thus the right to liquidate the nominal balance to his credit by applying to that purpose his liabilities to the bank, *though not then due*. This right of the bank inured to the receiver for the benefit of all creditors, *and no teller or other officer of the association could 'certify' it away.*" (*Vide* Civil Code of Louisiana, Art. 2054, and United States Bankruptcy Act, as to offsetting claims unmatured.)

If such liquidation had, in fact, been forced at that precise date, a discount for the time said respective obligations had to run, at the highest conventional rate of interest (10 per cent.) would have been necessary, thereby reducing the value of said acceptance (as such set off) to \$99,444.44, and the like value of said note to \$49,583.33; but as no such legal adjustment was actually effected, such prescribed discount need not now be regarded.

Nor is this theory, although sound, essential to vindicate the right of the bank, or rather the right of the Comptroller and receiver as trustees for the creditors of the bank, to insist and demand that said mutual liabilities shall, to their respective amounts, liquidate and cancel each other.

Remember that the check so as aforesaid drawn, indorsed, and delivered by May, on the day of, but in fact after the actual suspension of the bank, gave to the United States no right of action against the bank. (See *National Bank of the Republic vs. Millard*, 10 Wallace, on pages 156-7.) The right to sue for said balance, apparently to the credit of May, *still remained in him alone*. Suppose he had on that day brought suit for it; and suppose, for argument's sake, that some balance was actually due him. In the then condition of the bank, even if he had, in such suit, obtained judgment for such balance, it would have availed nothing, save as a simple allowance of his claim. Upon such judgment he could not have demanded execution, nor the payment of one dollar. (*National Bank vs. Pahquioque National Bank*, 14 Wall., 401.)

The United States could acquire no better rights than May had.

If it be replied "The check operated as an assignment of May's interest, even if it conferred upon the Government no right of action," the answer is, "An assignee stands always in the shoes of the assignor—

never in any more favorable condition." Of course this has no application to indorsees of commercial paper indorsed before due.

Furthermore, if suit had been brought, as above supposed, long before it could have been prosecuted to final judgment, both of said obligations would have matured; and thereupon the receiver, either by special answer in the same cause, or "by a distinct and separate demand" in the same court, could have demanded that said obligations be applied as "*set-off*" ("*compensation*," as the Louisiana Code names it) in discharge of said nominal balance. (See *La. Code of Practice*, articles 367 and 368.)

Not only does this right still exist, although no suit has been instituted, but as soon as said obligations matured, the law of Louisiana, *ex propria vigore*, operated to "compensate" (offset) said mutual liabilities to the extent of the amount of said obligations. (See *Civil Code of Louisiana*, articles 2207, 2208.) Said article 2208 is as follows: "'Compensation' (set off) takes place, of course, by the mere operation of law, even unknown to the debtors. The two debts are reciprocally extinguished, as soon as they exist simultaneously, to the amount of their respective sums."

Enough has been suggested to establish that both said "acceptance" and note should be, and are, legal offset against said pretended balance of \$315,879.10.

3. If here it is asked "Why has there been such delay in presenting the present claim?" the query might be answered by propounding another, viz., "Why has the Government, up to this hour, failed to make any formal claim based upon said check—the check given to cover May's nominal credit?" But beyond this it is just to add, that, until within a few weeks past, it has been the effort and hope of your office and of the receiver to collect the said overdrawn partnership account (\$237,008.89) from the purchasers of the assets of said firm, so that said sum of \$315,879.10 nominally to May's credit, could be applied in adjustment of his individual liability as shareholder (\$141,000) and other debts. The theory upon which this was attempted, on Louisiana law, is stated in said letter of August 16, 1873, as follows:

"Another view is, that the creditors of the bank, *and the receiver for them*, should insist upon the application of *other* liabilities of May to the bank, to the extinguishment of his nominal credit of \$315,879.10, and that the copartnership property of May, Graham & Beauregard should be subjected to the payment of their aforesaid indebtedness of \$237,008.89. True, May undertook and assumed to transfer *all this copartnership property* to the United States, viz., the railroad lease, cars, horses, mules, depots, houses, lands, and all other property; and the United States have since sold everything thus transferred to third parties, who bought with full notice that it was copartnership property they were purchasing, &c. In short, May attempted to appropriate the entire partnership assets to the satisfaction of his personal liability to the Government. But the law is that *copartnership property must be first subjected, so far as needed, to the satisfaction of copartnership indebtedness*, and that one member of the firm, by attempting to use it in liquidation of his individual liabilities, cannot defeat this right of copartnership creditors to be first satisfied their claims.

"When the bank failed, therefore, and its assets passed to the receiver, one of those assets was this '*chose in action*,' viz., the right to subject all said railroad property to the payment of said debt of

\$237,008.89. This right May could not defeat by his transfer to the United States; this right it is the duty of the receiver to insist upon, as much so as it his duty to collect all other assets. The purchasers will, perhaps, then call on the United States for indemnity, but that possibility will not excuse the receiver from collecting all he legally can for the creditors of the bank."

Pursuant to the above views, within the past ten years, three suits have been instituted, two in chancery and one at law. All were carried to the Supreme Court of the United States, and decided adversely to the bank. The facts are now referred to in justification of the time that has thus been consumed. (See *Beauregard vs. Case*, 1 Otto, 134; *Case vs. Beauregard*, 9 Otto, 119; *Case vs. Bank*, 10 Otto, 446; *Case vs. Beauregard*, 11 Otto, 688.)

4. Can "*prescription*" (the statute of limitations) be set up to defeat the present claim?

The very propounding of this question suggests that it is scarcely compatible with that justice which should be the pride and glory of the United States, that they should interpose a defence which they will never permit to defeat any claim by them asserted. Still, it has been decided that a sovereign government may resort to this "one-sided" practice; and therefore the question is, would it avail, as to the claim now made? I have very carefully, and, as is believed, thoroughly examined the authorities upon this point. I do not propose here to state the argument or cite adjudications; but, if the point is raised, I believe it can, at the proper time, be shown that it will not shield the Government from liability.

5. Part of the claim can be, and is, "compensated."

Finally, it remains to suggest that there is in the hands of the Comptroller of the Currency the sum of \$56,000, and over, [\$65,826.40,] of dividends retained to abide the adjustment of this matter. This sum, beyond all controversy, you can "*compensate*" (offset) against the present claim, thus giving you at least that additional amount for distribution to creditors. The statute of limitations cannot be set up in bar of *this* right, whatever its effect might be as a defence to the full claim.

July 23, 1880, the Comptroller of the Currency addressed a letter to the Secretary of the Treasury, in which he says:

"At the time of the failure of the First National Bank of New Orleans, there were standing on the books of the bank certain amounts which had been deposited by order of the court in favor of certain vessels, and which were, as I understand, the avails arising from the sale of those vessels and their cargoes, amounting to \$208,360.56. Judgments were subsequently obtained against the United States for \$188,075.47, and that amount, as I am informed, paid by the Government to the owners of the following vessels:

Schooner 'Flying Scud,' and cargo.....	\$62,814. 58
Brig 'Volante'.....	116,360. 89
Bark 'Science,' and cargo.....	8,900. 00
	<hr/>
	188,075. 47
	<hr/>

"Dividends, in all amounting to 70 per cent., have been paid to creditors of the bank; but 35 per cent. dividends only have been paid to

the United States upon the account of these vessels, and there now remain in my hands additional dividends amounting to 35 per cent., or \$65,826.40.

"There is due to the bank from the Government \$94,000, which was transferred by me in the month of May, 1867, from the vaults of the bank to the office of the Assistant Treasurer, to be applied in payment of the checks of Thomas P. May, which checks were subsequently found to be without value.

"If, upon investigation, it is found that this claim is correct, it is suggested that the amount now due as dividends—viz., \$65,826.40—be allowed as an offset upon an order of court, to be obtained for that purpose; and that Congress be asked, during its next session, to appropriate a sufficient amount to cover the deficiency."

September 15, 1880, this letter was, by the Secretary of the Treasury, "referred to the First Comptroller for his opinion."

The check for \$315,779.11 was never proved as a claim against the receiver or the Comptroller of the Currency; and hence no dividend was ever declared for it.

There is appended to the argument of the receiver the following letter:

"DEPARTMENT OF JUSTICE, *January* 19, 1874.

"SIR: I have considered the alleged claim of the United States against the First National Bank of New Orleans, submitted to me by your letter of the 11th November last.

"The facts of the case are complicated, and there has been no abstract or statement of them prepared, as there ought to have been, for my consideration.

"The facts, however, so far as they are necessary for me to dispose of the questions in the case, can be very briefly stated. By the act of 1864, ch. 106, sec. 54, (13 U. S. Stats., p. 116,) it is provided 'that the Comptroller of the Currency, with the approbation of the Secretary of the Treasury, as often as shall be deemed necessary or proper, shall appoint a suitable person or persons to make an examination of every banking association; which person shall not be a director or other officer in any association; whose affairs he shall be appointed to examine, and who shall have power to make a thorough examination into all the affairs of the association, and, in doing so, to examine any of the officers and agents thereof on oath, and shall make a full and detailed report of the condition of the association to the Comptroller.'

"On Sunday, the 12th of May, 1867, the agents for the Treasury, appointed under this act to investigate the affairs of the First National Bank of New Orleans, took possession of the bank, which, up to that time, had transacted business as usual.

"Thos. P. May, who had been the president of the bank, (but was not at that time,) and also assistant treasurer of the United States, was a defaulter in the latter office to a very large amount, and was also at this time hopelessly insolvent.

"There was then on the books of the bank an apparent balance standing to his credit of \$315,779.11; but there was no such sum, nor, as it would seem, any sum, actually due him.

"On Monday, the 13th, while Mr. Knox and the Government agents were in possession of the bank, he drew a check in favor of T. P. May

& Co., indorsed in blank, upon the bank for the amount of this nominal balance and delivered it to the Treasury agents, who were also in possession of the sub-Treasury, and engaged in investigating May's affairs, as well as in examining into the condition of the bank.

"This check was marked 'good' by the teller, and a large payment was made upon it; and the check was protested for non-payment of the residue. The next day the bank, by direction of the Treasury agents, stopped payment on circulation and went into liquidation, and Mr. Chas. Case was appointed its receiver.

"Your question seems to be whether this check is a valid claim against the bank. This question turns entirely upon controversies dependent upon matters of fact which it is not the province of the Attorney-General to settle. (Opinion of Attorney-General Stanbery, 12 Opinions, 206.)

"If the check was marked 'good' by the teller without the approval or knowledge of other officers of the bank, I doubt whether it would bind the bank. At least the authorities on this point are conflicting. On the other hand, the president and cashier of the bank are undoubtedly officers who can by such a certificate bind the bank. (Merchants' Bank *vs.* State Bank, 10 Wall., 604; Faneuil Hall Bank *vs.* Bank of Brighton, 16 Gray, 534.) But in order, under any circumstances, to make such a certificate valid and binding upon the bank, it must have been made in the ordinary course of business, and the check received by the holder in good faith and without collusion. If, at the time the check was marked 'good' in this case, the officers were actually suspended from their duties, and the bank was entirely in the possession of the Treasury agents, so that, in marking it 'good,' the teller acted by their direction, and not that of the bank officers, then, in my judgment, the check would not have been received by the Government in good faith so as to render the bank liable for the amount thereof, or for any actual balance at that time due and owing to Thos. P. May. If, too, at the time the check was taken from May and marked 'good' by the teller, the gentlemen representing the Treasury knew that the bank was in a failing condition, that May's affairs with it were very much involved, and consequently took the check for what it was worth, being fully aware that it was doubtful whether such an amount was due May; and if they did all this, when from their investigation of the affairs of the bank, they had reason to believe that the bank was in a failing condition, then I do not think that the check can be considered to have been taken, either in the ordinary course of business, or in good faith, or at least in that degree of good faith which the law requires in order to make the bank liable for the amount of the check.

"Of course, in using the phrase *good faith*, I merely mean good faith in a technical sense, and do not intend to impugn the motives of the gentlemen who represented the Government in this transaction.

"But it is very apparent that if they were instrumental in procuring the check to be drawn and the teller to certify that it was 'good' under the circumstances of the case, knowing or suspecting that there was no balance due to May by the bank, and that the bank was really insolvent, then the Government cannot take advantage of their action, so as to render the bank liable, by reason of the check, for any part of May's liability to it; nor can it found any claim *upon the check*, or in consequence of holding it, to share with other creditors of the bank in the assets in the hands of the receiver.

"From a perusal of the papers, I do not think it necessary for me, now, to go more fully into the case. To obtain any further opinion from me upon the subject, it will be necessary for the Hon. Secretary of the Treasury to submit to me a statement of the facts as they are ascertained to be in his Department.

"Whether the Government officers had actual or constructive notice of the condition of the bank and May's balance there, is a question of fact and not a question of law, upon which I cannot undertake to decide.

"I have the honor to be, sir, your obedient servant,

"GEO. H. WILLIAMS,
"Attorney-General.

"Hon. W. A. RICHARDS, JR.,
"Secretary of the Treasury."

OPINION BY WILLIAM LAWRENCE, *First Comptroller* :

There is deposited in the Treasury of the United States, "subject to the order of the Comptroller" of the Currency, the sum of \$65,826.40, paid there by the receiver of the First National Bank of New Orleans. (Rev. Stats., 5234.) This sum represents that portion of the money realized from the assets of the bank by the receiver which is *due to the United States* from the bank as dividends declared by the Comptroller of the Currency on claims duly proved. (Rev. Stats., 5236.)

I.—No part of this money can be paid on the claim now made.

The law has determined against the claim; for it requires in effect that dividends declared as those in question have been shall be paid to the claimants entitled thereto. (Rev. Stats., 5236.) The duty of the Comptroller of the Currency is plain—it is fixed by law; it is to pay the money to the United States, so that it may be duly "covered into the Treasury."

The Comptroller of the Currency cannot pay this claim, because (1) he is not an officer charged with the duty of auditing or allowing claims against the United States; and, if the claim were legally established, (2) he is not authorized to appropriate to the payment of such claim money declared as dividends due to the Government.

(1.) Under the law it is the duty of the Comptroller of the Currency, only, to decide on the validity of claims *against the bank*, except that courts of proper jurisdiction may adjudicate them.

It is the duty of the *receiver*, only, "to collect all debts." In the discharge of this duty the Comptroller of the Currency has no part, unless by his power of appointment and removal; though in some suits, not material to the present case, the receiver acts "under the direction of the Comptroller." (Rev. Stats., 5234; *Kennedy vs. Gibson*, 8 Wall.,

498, 506; *Bank vs. Kennedy*, 17 Wall., 19; *Cadle vs. Baker*, 20 Wall., 650; *Chemical National Bank vs. Bailey*, 12 Blatchf. C. C., 480.)

The receiver had two remedies for the collection of this claim:

a. He could have presented it to the proper accounting officers of the Treasury Department. (Rev. Stats., 236.)

b. He could have brought suit in the Court of Claims against the United States on the claim now made; and in this tribunal its legal validity could have been determined.

The receiver has not pursued either remedy, and the claim is now barred in the court by the statute of limitations. (Rev. Stats., 1069.) The United States, as a general rule, cannot, on grounds of expediency, properly waive the bar of the statute. Attorney-General Black said, on July 21, 1858 (9 Op., 204): "It is a rule of common sense and reason, as well as law, that when a party has lain by with a claim until the evidence concerning it has ceased to exist, and then produces it, the other party is not bound to explain it." (See Lawrence's "Law of Claims against Governments," House Reps., No. 134, 2d Sess. 43d Cong., 13, 18, 238, 242, 318, 324.) No officer is authorized to waive the bar of the statute. (*Andrae vs. Redfield*, 12 Blatchf. C. C., 407.)

A claim against the Government in the hands of an able lawyer, who permits it to slumber without suit for thirteen years, until much of the evidence essential to meet and defeat it must or may be lost, is not, as a general rule, entitled to favorable consideration. This is a very late day, also, to object to the appropriation by the special agents of the \$94,000 to the credit of Whitaker, and indirectly to the benefit of the Government. If objection had been promptly made, the Government could have pursued all appropriate remedies against Whitaker and May, and might have made other claims against the bank, its assets, and the receiver. It is a principle of equity that he who is silent when he *should* speak shall be silent when he *would* speak.

As the receiver has not established his claim against the United States in either of these two modes, or otherwise, there is no authority to pay any money of the United States thereon.

(2.) The Comptroller of the Currency has no authority to appropriate as dividends for the payment of this claim, even if it were in a judgment, money declared to be due to the Government. If the claim had been established as valid, it still could not be paid without an appropriation by act of Congress. (Const., Art. I, sec. 9.) No officer of the United States having money of the Government in his hands, or subject to his control, can, without authority of law and in his own discretion, apply it in payment of liquidated debts against the United States;

much less can he apply it in payment of unliquidated claims like this, which are on their face, to say the least, of doubtful validity.

II.—It seems to be supposed that this claim can be paid by an arrangement in the nature of set-off in equity, or of “compensation” under the civil-law rule of the Louisiana Code. This will be considered.

The statute of the United States provides that the receiver, “upon the order of a court of record of competent jurisdiction, may sell or *compound* all bad or doubtful debts.” (Rev. Stats., 5234.) The receiver in this case asks the Comptroller of the Currency to allow him, under the law, to accept “the sum (\$65,826.40) withheld on said dividends, in full of the claim now made.” Such acceptance is not only unauthorized, but prohibited by law.

The right of the Government to compromise, by proper lawful agencies, a claim made against it, cannot be doubted. But the Government acts by officers or agents whose authority is given by law. (The Floyd Acceptances, 7 Wall., 676.) No law has given the Comptroller of the Currency authority to make the compromise suggested. (9 Op., 199.) The Secretary of the Treasury can in some cases compromise claims in favor of the Government, (Rev. Stats., 3469; U. S. *vs.* Ames, 1 W. & M., 76;) but no authority for the compromise of such claims as this is given.

It is at least doubtful whether the provision of section 5234 as to *sale* applies to debts against the United States; and it is certain that it does not apply to the *compounding* of such debts. The Government, as a general rule, is not included in statutes. (Richey's case, *ante*, 85, 103.) If this claim were sold, the purchaser would only take such rights as the bank had to seek a remedy against the Government. (U. S. *vs.* Buford, 3 Pet., 30.) The United States cannot, without its consent, be made a party in court so as to be bound by an order thereof. (Brown's case, 6 Ct. Cls., 192; Fichera *vs.* United States, 9 Ct. Cls., 254; Nichols *vs.* U. S., 7 Wall., 126; Lawrence's Law of Claims against Governments, 192, 205, &c.) No officer of the United States can be made a party in court for such purpose. (Safford's case, *ante*, 277–281; Carr *vs.* United States, 98 U. S., 437; Pettigrew *vs.* United States, 97 U. S., 388; Vermilye *vs.* Adams Ex. Co., 21 Wall., 138; Green *vs.* Walkill National Bank, 14 New York Sup. Ct. R., 63.)

Hence, no right of the Government to the \$65,826.40 can be taken away by the order of any court, nor can the Government be charged with a liability by way of compounding a doubtful debt. The power given to courts to authorize a compounding applies only to such parties as can lawfully be brought into court.

The provisions of sections 380 and 563 of the Revised Statutes authorize the receiver, but not the Comptroller of the Currency, to be made a party in court. (*Kennedy vs. Gibson*, 8 Wall., 500.)

Money or property in the lawful custody of executive officers is *in custodio legis*, and is not subject to judicial control; nor can such officers be made amenable to judicial authority or action by reason of such custody, or of the disposition they may, in good faith, make thereof, in pursuance of authority given by law, notwithstanding they may err in judgment. Any other principle would enable the judiciary to usurp executive functions, contrary to the plain letter and purpose of the Constitution in affirming the separate independent existence of judicial and executive powers. It is not intended to deny the right of the *Government* to invoke, in proper cases, the exercise of judicial power over its own officers. Executive officers, in performing merely ministerial duties, are in proper cases subject to *mandamus*. So they may be held liable for acts wholly unauthorized by law or beyond their jurisdiction.* (*Case vs. Terrell*, 11 Wall., 203; *Safford's case*, *ante*, 277, 281, note; see *McNutt vs. Bland*, 2 How., 15; *Walden vs. Skinner*, 11 Otto, 589; *Williams vs. Benedict*, 8 How., 107; *Vaughn vs. Northrop*, 15 Pet., 1; *Wiswall vs. Sampson*, 14 How., 52; *Erwin vs. Lowry*, 7 How., 172; *Taylor vs. Carryl*, 20 How., 596; *Harris vs. Dennie*, 3 Pet., 292; *Buchanan vs. Alexander*, 4 How., 20; *U. S. vs. McLemore*, 4 How., 286; *Hill vs. U. S.*, 9 How., 386; 7 Op. Att'ys-General, 80; *Reeside vs. Walker*, 11 How., 272; *U. S. ex rel. Tucker vs. Seaman*, 17 How., 225, 284; *Comm'r of Patents vs. Whiteley*, 4 Wall., 522; *U. S. vs. Comm'r*, 5 Wall., 563; *Gaines vs. Thompson*, 7 Wall., 347; *The Secretary vs. McGarrahan*, 9 Wall., 298, 312; *U. S. ex rel. McBride vs. Schurz*, 12 Otto, 378; see *Rev. Stats.*, 989; *Andrae vs. Redfield*, 12 Blatchf. C. C., 407.)

*This question does not arise in the case under consideration, but it is liable to arise in many cases. It is of great importance as affecting the authority and independence of executive and other officers.

Executive Officers.—If an executive officer charged with a duty of judging as to the payment of money, disposition of property, or exercise of an important public trust, “errs in the discharge of his duty, in good faith, he is not liable” to an action. (2 Hilliard on Torts, 183; Addison on Torts, p. 729; *Douhoe vs. Richards*, 38 Maine, 376, 379; *Reed vs. Conway*, 20 Mis., 22; *Kendall vs. Stokes*, 3 How., 87; *Whitelegg vs. Richards*, 6 Moo., (J. B.), 501; *Warner vs. Shed*, 10 Johns, 138; *Dynes vs. Hoover*, 20 How., 65; *Woods vs. Davis*, 34 N. H., 328; *Gray vs. Kimball*, 42 Maine, 299; *Mason vs. Vance*, 1 Sneed, 178; *Ortman vs. Greenman*, 4 Mich., 291; *Hunt vs. Ballew*, 9 B. Mon., 390; *Kavanagh vs. City of Brooklyn*, 38 Barb., 232; *Stone vs. City of Augusta*, 46 Maine, 127; *Downer vs. Lent*, 6 Cal., 94; *Ela vs. Smith*, 5 Gray, 136; *Nichols vs. U. S.*, 7 Wall., 122; *Cooley on Torts*, p. 214; *Townshend on Slander and Libel*, sec. 227; *Scott vs. Stanfield*, L. R., 3 Exch., 220; *Reg. vs. Longton Gas Co.*, 29 L. J. M. C., 118; *Jones vs. Bird*, 5 B. & Ald., 837; *Clothier vs. Webster*, 12 C. B. N. S., 790; 31 Law J. C. P., 317; *Bradley vs. Arthur*, 4 B. & C., 305; *Warden vs. Bailey*, 4 Taunt., 67; *Scovil vs. Geddings*, 7 Ohio, Pt. 2, p. 211; *Drewe vs. Coulton*, 1 East, 563, note.) By the laws of Edgar and of Canute an officer was exempt, as shown by a case in the Year-Books as early as 1431. (9 Hen. 6, p. 60.)

If, however, the Comptroller of the Currency could be made a party, the *court* could not authorize the application and appropriation of the money of the United States, because the Comptroller of the Currency has no authority to dispose of public money as now proposed. That requires legislative authority. When a dividend of \$65,826.40 was declared in favor of the Government, a vested right thereto was created. It was a right which was fixed in pursuance of law, and could not be divested except by *law* or the decree of a court having jurisdiction of the subject-matter.

It is not pretended that the \$94,000 collected from the bank as above stated can now be returned to the receiver. It is, as already shown, in the Treasury, and, having been placed there under color of authority, it cannot be withdrawn except "in consequence of appropriations made by law." (Const., Art. 1, sec. 9.) A payment voluntarily made, even under

Election Officers.—Election officers are in some States protected against an action for improperly, but in good faith, refusing a lawful voter the privilege of voting. (Cooley on Torts, ch. xiv, p. 413; 2 Hillard, Torts, 162; Bevard *vs.* Hoffman, 18 Md., 479; Gordon *vs.* Farrar, 2 Doug., (Mich.), 411; Cullen *vs.* Morris, 2 Stark., 577; Tozer *vs.* Child, 6 El. & Bl., 289; S. C., 7 El. & Bl., 381; Elbin *vs.* Wilson, 33 Md., 135; Anderson *vs.* Baker, 23 Md., 531; Friend *vs.* Hamill, 34 Md., 298; Goetcheus *vs.* Mathewson, 61 N. Y., 420; Weckerly *vs.* Geyer, 11 Pa., S. & R., 35; Caulfield *vs.* Bullock, 18 B. Mon., (Ky.), 495; Carter *vs.* Harrison, 5 Blackf., (Ind.), 138; Wheeler *vs.* Patterson, 1 N. H., 88; Peavey *vs.* Robbins, 3 Jones, (N. C.), 339; Rail *vs.* Potts, 8 Humph., (Tenn.), 225; Fansler *vs.* Parsons, 6 W. Va., 486; s. c., 20 Am. Rep., 431; see cases collected in Cooley on Torts, p. 415; Jenkins *vs.* Waldron, 11 Johns., 114; Leutz *vs.* Stroh, 6 Serg. & Rawle, 35; Stone *vs.* Farey, 1 East, 555.)

In other States election officers are held liable to an action for unlawfully refusing a vote in good faith, but the liability is put upon the ground that it is essential to preserve a great privilege, and without such liability a voter would be without remedy. (Cooley on Torts, ch. xiv., 413; Jeffries *vs.* Ankeney, 11 Ohio, 372; Ashby *vs.* White, 1d. Raym., 938; 1 Salk., 19; 8 State Trials, 89; Drewe *vs.* Coulton, 1 East, 563, note; Lincoln *vs.* Hapgood, 11 Mass., 350, 355; Gardner *vs.* Ward, 2 Mass., 244 n; Kilham *vs.* Ward, 2 Mass., 236; Henshaw *vs.* Foster, 9 Pick., 312; Capen *vs.* Foster, 12 Pick., 485; Keith *vs.* Howard, 24 Pick., 292; Blanchard *vs.* Stearns, 5 Metc., 298; Charles River Bridge *vs.* Warren Bridge, 7 Pick., 485; Anderson *vs.* Milliken, 9 Ohio, (N. S.), 568; Monroe *vs.* Collins, 17 Ohio, (N. S.), 665; see cases in Cooley on Torts, p. 415, *et seq.*)

Revenue Officers.—(Cooley on Torts, p. 411; Erskine *vs.* Hohnbach, 14 Wall., 613; Nichols *vs.* U. S., 7 Wall., 122; Gould *vs.* Hammond, 1 McAllister, 235; Rogers *vs.* Dutt, 13 Moore, P. C. C., 209.)

Judicial Officers.—"No action will lie against a judge of record for any matter done by him in his judicial functions." (Cooley on Torts, 403, ch. xiv; 2 Hilliard, Torts, 162; 2 Stark. Ev., 807; Addison on Torts, pp. 617, 667; Garnett *vs.* Ferrand, 6 B. & C., 611; 1 Chit. Pl., 68; Downer *vs.* Lent, 6 Cal., 94; Glavecke *vs.* Tijirina, 24 Texas, 663; Pratt *vs.* Gardner, 2 Cush., 68; Yates *vs.* Lansing, 5 Johns., 282; 9 Johns., 395; Moor *vs.* Ames, 3 Caines, 170; Brodie *vs.* Rutledge, 2 Bay. 69; Wingate *vs.* Haywood, 40 N. H., 437; Smith *vs.* Boucher, Rep. Temp. Hardwicke, (Annals,) 4, 136; Doswell *vs.* Impey, 1 B. & C., 163; Mortyn *vs.* Fabrigas, 1 Cowp., 172; Ackerley *vs.* Parkinson, 3 M. & S., 411; Holroyd *vs.* Breare & Holmes, 2 B. & Ald., 473; Lowther *vs.* Earl of Radnor, 8 East, 113; Mills *vs.* Collett, 3 Moo. & P., 242; Raymond *vs.* Bolles, 11 Cush., 317; Wright *vs.* Hazen & Gordon, 24 Vt., 143; Mooney *vs.* Williams, 15 Mo., 442; Bushell's case, 1 Mod., 119; Hamond *vs.* Howell, 1 Mod., 184; Pike *vs.* Carter, 10 Moore, 376; s. c., 3 Bing., 78; Downing *vs.* Herrick, 47 Maine, 462; Wertheimer *vs.* Howard, 30 Mis., 420; Linford *vs.* Fitzroy, 13 Ad. & E. N. S., 240; Chickering *vs.* Robinson, 3 Cush., 543; Way *vs.* Townsend, 4 Allen, 114; Bassett *vs.* Godschall, 3 Wils., 121; Collins *vs.* Ferris, 14 Johns., 246; Deal *vs.* Harris, 8 Md., 40; Burnham *vs.* Stevens, 33 N. H., 247.)

a mutual mistake, cannot generally be recovered. (*Nichols vs. U. S.*, 7 Wall., 128; 13 Pet., 268; 13 How., 488; 2 Black, 461.)

III.—The receiver suggests that—

“Congress, if asked, would undoubtedly grant relief by authorizing the reference of the matter to the Court of Claims.”

The receiver has the right of petition to Congress; and it is not doubted that if existing laws are such that justice cannot be done to the receiver by executive officers, proper relief can and will be granted by legislative authority. The act of June 14, 1878, (20 Stats., 130,) provides for cases in which certain claims may be reported to the Speaker of the House of Representatives by the Secretary of the Treasury; but the claim now being considered is not one of them. No law has imposed on the Comptroller of the Currency any duty beyond that which he has performed. He should, undoubtedly, as a legal duty, exercise a watchful care over the receiver, and duly protect the rights of creditors and stockholders of the bank; and he may, on principles of abstract justice, give his influence in aid of proper demands. He has, in this case, acquiesced in the management of the receiver, and there is nothing in the facts presented or in the law which justifies an opinion that any duty was omitted by the receiver in not bringing suit against the Government, or in any respect by him or the Comptroller of the Currency. If this claim had been well founded in law, it is not reasonable to suppose that the receiver would have omitted to bring, in proper time, an action for its recovery in the Court of Claims. There he might have been met with a claim in favor of the Government for a balance due on the check for \$315,879.10, or the fund it represented in bank.

On the whole case, it is by no means absolutely certain that the Government should not seek to recover the balance unpaid on the check of \$315,879.10. (*Bank of Bethel vs. Pahquioque Bank*, 14 Wall., 383.) Without pretending now to declare any settled opinion as to that, the following suggestions might become worthy of consideration:

Until the first act of insolvency by the bank, by the protest for non-payment of one of its notes, May 16, 1867, the bank could lawfully transact business. (Rev. Stats., 5226, 5227, 5234; *Morse on Banking*, 471, cited; 2 Daniel, *Neg. Inst.*, secs. 1638, 1644; *Anderson vs. DeSoer*, 6 Grat., 364; *Maher vs. Brown*, 2 La., 494; *Giddings vs. Coleman*, 12 N. H., 153; *Legro vs. Staples*, 16 Maine, 252; *U. S. vs. Vaughan*, 3 Bin., 394; *Colt vs. Ives*, 31 Conn., 25; *Nesmith vs. Drum*, 8 Watts & S., 9; *Adams vs. Robinson*, 1 Pick., 461; *Wheatley vs. Strobe*, 12 Cal., 98.)

The officers of the bank did not act under *duress* at any time.

On general principles and in normal conditions the check for

\$315,879.10, when presented to the bank, operated as a transfer to the United States of that sum, to the credit of May, on the books of the bank, if the Government, rather than pursue the drawer of the check, so elected. (*Mandeville vs. Welsh*, 5 Wheat., 277; *Morse on Banking*, 2d ed., 471, 530; *Harris vs. Clark*, 3 Comst., 93; 2 Daniel, *Neg. Inst.*, secs. 1638, 1643, &c.; *Munn vs. Burch*, 25 Ill., 35; *Matter of Brown*, 2 Story, 502; *Bell vs. Alexander*, 21 Grat., 6; *Morrison vs. Bailey*, 5 Ohio St., 13; *Robinson vs. Hawksford*, 9 Q. B., 52; *Keene vs. Beard*, 8 C. B., n. s., 372; *Chicago, &c., Ins. Co. vs. Stanford*, 28 Ill., 168; *Roberts vs. Corbin & Co.*, 26 Iowa, 324; *Bickford vs. Bank*, 42 Ill., 238; *Fourth National Bank vs. City National Bank*, 68 Ill., 398; 1 Daniel, *Neg. Inst.*, chap. 1, secs. 15, 16, &c.; *Fogarties vs. State Bank*, 12 Rich. So. C., Law, 518; *Vanbibber vs. La. Bank*, 14 La. An., 486; *Ancona vs. Marks*, 7 Hurl. & N., 686.)

In *Vanbibber & Co. vs. Louisiana Bank*, 14 La. An. R., 486, decided in May, 1859, the supreme court of Louisiana determined a question of significant importance. In that case it appeared that a check was drawn on the Louisiana Bank payable to the order of Vanbibber & Co., which the bank paid to their collecting agent, who forged their indorsement thereon. They then brought an action to recover of the bank the amount of the check, and the supreme court affirmed a judgment against the bank in their favor for the amount of the check. The opinion says:

“A depositor in a bank has the right to suppose that the bank will only pay out his money upon his own signature * * * and upon the conditions specified in the check. The party receiving the check drawn by a depositor is actuated by this confidence and belief, and takes a check with the understanding that it shall be paid only to his order, or as specified in the check.

“There was an implied engagement, upon the part of the bank, to pay to third parties the checks drawn in their favor by depositors, and thus there was a privity of contract between the plaintiffs and the bank.

* * * * *

“Defendant contends that the bank is not liable to the payee of a good check, which it has obtained under a forged endorsement, and that its only liability is to the drawer, whose name is on its signature book.

“The banks, having consented to pay the deposits of their depositors on their checks, have thus tacitly agreed to pay them to the payees; and they are bound to know that the checks are paid to the real payees, or their agents, as long as they permit their depositors thus to draw checks and thus to make payments to their creditors. Otherwise, creditors would be liable to be defrauded.

* * * * *

“The bank receiving the money of plaintiffs, not on special deposit but subject to being checked for, acquires a benefit, as it has the use of

the money; and in consideration, and also to oblige their customers, agrees to pay it out as ordered by the depositors * * *. If the defendant were not responsible, it would put innumerable obstacles in the way of business. * * * The bank becomes the agent of the debtor to pay the check. In agreeing to pay it, they agree to pay it to the right person. If they do not wish to do this, their duty is to refuse to pay. But in accepting the agency, which is for a consideration, they subject themselves to the rules and obligations of agents and can be sued directly by the creditor of the debtor, who is the holder of the check. * * * The bank holds the money of its depositors subject to be checked for as their agent. When, then, the bank receives a check, instructing them to pay a certain part of the deposit of the drawer to a third party, and the bank agrees so to do by its general custom, and by undertaking to pay it upon the supposed endorsement of the third party, the amount of money represented by the check, and on deposit as that of the drawer, becomes *eo instanti* THE PROPERTY OF THE PAYEE, AND THE BANK, FROM THE MOMENT IT UNDERTAKES SO TO PAY THE CHECK, HOLDS THE AMOUNT OF THE CHECK AS THE AGENT OF THE PAYEE, and is responsible to the payee, as his agent, if he pays it upon a forged endorsement. The bank also holds the amount of the check as the agent of the drawer, and undertakes, as his agent, to HOLD THE AMOUNT OF THE CHECK NO LONGER AS THE AGENT OF THE DRAWER, BUT AS THAT OF THE PAYEE; so that, either the drawer or the payee can maintain an action against the bank, unless one of them has deprived himself of the right by some action of his own."

It may fairly be presumed that it was in view of the law as above stated that the check for \$80,000 was taken and held at a time when there was no law to prevent the bank from paying the check in full; and that the delay in presenting it has worked no injury to creditors of the bank. It did not diminish the assets of the bank any more to pay it on May 13, 1867, when the special agents secured its payment, than if it had been paid at its date. February 15, 1867. There is a *strong equity*, therefore, in holding that this was properly paid.

It is finally decided by the Supreme Court of the United States that, where the common law prevails, the holder of a check cannot generally maintain an action of assumpsit against the bank on which it is drawn. (*Bank of Republic vs. Millard*, 10 Wall., 156.) The question whether there is a remedy in tort or in equity may not be certain. If the holder of a check has waived his right to sue the drawer, the question would then arise, whether he could maintain assumpsit against the drawee. That question is not decided in *Bank of the Republic vs. Millard*, 10 Wall., 156. (2 Daniel, Neg. Inst., secs. 1617 and 1639; Morse on Banking, 234; Parsons, Notes and Bills, 62; *Roberts vs. Corbin & Co.*, 26 Iowa, 324; *Rodick vs. Gandell*, 12 Beav., 325; s. c., 1 DeG. M. and G., 763.)

In case the bank on which a check is drawn goes into the hands of a receiver, other questions would arise.

Daniel says: "A general assignment for the benefit of creditors would not defeat the check-holder, although he had not presented the check." (2 Neg. Inst., secs. 1643, 1644; *Roberts vs. Corbin & Co.*, 26 Iowa, 327; *Anderson vs. De Soer*, 6 Grat., 364; *Maher vs. Brown*, 2 La., 494; *Giddings vs. Coleman*, 12 N. H., 153; *Wheatley vs. Strobe*, 12 Cal., 98.)

The First National Bank of New Orleans had not asserted any right to charge up to the account of Mr. May, when the checks were paid, any of his past-due indebtedness.

In *Morse on Banks and Banking*, 2d ed., 1879, p. 35, it is said:

"The bank is under the obligation of honoring the customer's drafts and checks whenever the same are presented for payment, provided that at the time of such presentment the *balance of the account*, if then struck, would show a credit in favor of the customer of funds, on which the bank has no lien, sufficient to meet the sum called for by the check or draft."

On page 265 of the same work it is said:

"Strictly speaking, if the bank has, at the time of presentment of a check for payment, funds to the credit of the drawer sufficient to meet it, unpledged by any acceptance or undertaking of the bank on his behalf, and upon which no lien for any indebtedness due from him to the bank has attached, the obligation to pay accrues instantly. The bank has no right to defer the payment with the intention of making or refusing it at a later hour, according as it shall be influenced by subsequent occurrences."

The check for \$80,000 in this case was not merely a transfer of such sum as the bank might actually owe Mr. May, after retaining a sum sufficient to pay his debts to the bank *unmatured* as well as due, but it was a transfer of the sum which the bank, by its books when free from error, *showed to his credit*.

Section 5242 of the Revised Statutes prohibits the payment of money by a national bank, in contemplation of insolvency, with a view to prefer creditors. But it may be doubtful whether this language applies to the Government. It may not control section 3466, giving a preference to the Government; and as to the check of February 15, 1867, for \$80,000, drawn when the bank did not contemplate insolvency, there is much equity in holding that this would operate as an assignment of that sum in bank to the credit of the drawer. (2 Daniel, Neg. Inst., sec. 1617-1638; *Morse on Banks and Banking*, 471.) It has not been deemed necessary to consider whether the claim of \$188,075.47, in favor of the Government against the bank, should have been paid *in full* before making dividends by the receiver to other creditors. Section 3466 of the Revised Statutes is to have effect, as well as section 5235. (See 13 Op., 529.) If such right of priority exists, the proper remedies can, if necessary, be considered. It is understood that

the question of priority for the Government, arising on section 3466 of the Revised Statutes, is involved in a case, somewhat similar to this, pending in the Supreme Court.

There is no evidence presented showing that any of the money of the Government went from Mr. May to the bank, but it is certain that a large amount went somewhere.

In order to reach a determination of this question founded on principles of abstract justice, a full inquiry must be made as to all material facts. Congress can make such inquiry, but executive officers cannot fully do so.

It is respectfully recommended that the Secretary of the Treasury direct the Comptroller of the Currency to deposit to the credit of the United States the \$65,826.40 held as dividends, now due to the Government, of the assets of the First National Bank of New Orleans; and that this amount be covered into the Treasury.

TREASURY DEPARTMENT,

First Comptroller's Office, December 23, 1880.

IN THE MATTER OF THE APPLICABILITY OF AN APPROPRIATION FOR THE FISCAL YEAR 1881 TO THE PAYMENT OF COMPENSATION FOR SERVICES RENDERED IN THE FISCAL YEAR 1879.—JAMES'S CASE.

1. The legislative, executive, and judicial appropriation act of June 15, 1880, is for the services generally of the fiscal year ending June 30, 1881; but notwithstanding its title and general purpose, it appropriates money to pay for editing in the fiscal year ending June 30, 1879, the laws enacted at the First Session of the Forty-sixth Congress, which commenced March 18, 1879.
2. It is a general rule that when in an *annual* appropriation act money is appropriated for official, quasi-official, or personal services, it can be paid therefor only when the services were rendered within the year.
3. Under such an appropriation act, money appropriated for the performance of work under contracts can generally be applied "to the fulfilment of contracts properly made during" the year, until the unexpended balance of the appropriation shall be covered into the Treasury.
4. The right to use money appropriated by such act, in payment of supplies furnished *after* the fiscal year for which the appropriation is made, is to be determined by the intention manifested in the act, and the purpose for which the supplies are required.
5. In the construction of an appropriation act, the title is an element to be considered, but it cannot control or limit the precise words of the body of the statute.
6. General words are to be understood in a comprehensive sense, unless there be a manifest purpose to give them only a restricted application.

There were three sessions of the Forty-sixth Congress, the first commencing March 18, 1879. Under the 5th section of the act of June 20, 1874, (18 Stats., 113,) "providing for publication of the Revised Statutes and the laws of the United States," the Secretary of State employed the Hon. Charles P. James to edit, for a compensation of \$100, the statutes passed at said first session—which duty he performed prior to July, 1879.

By reason of the temporary disability of the disbursing *clerk* of the State Department, S. A. Brown was, April 26, 1880, appointed disbursing *agent* of the Department, and as such gave bond, under section 3614 of the Revised Statutes. (Rev. Stats., 176, 193, 201; Birch's case, *ante*, 155; Inspectors' case, *ante*, 207; United States *vs.* Garglinghouse, 4 Benedict, 194; United States *vs.* Mason, 2 Bond, 183.)

The disbursing agent, in his abstract of disbursements for the quarter ending September 30, 1880, includes a voucher for said sum of \$100 paid said James. December 13, 1880, the Fifth Auditor "examined and adjusted" the account between the United States and the disbursing agent, finding the latter entitled to credit for said voucher; and referred the account to the First Comptroller for his decision thereon. The question arises on the Auditor's statement of account, whether the allowance of the voucher in question was valid.

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

The act of Congress of June 15, 1880, "making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-one, and for other purposes," (21 Stats., 210, 216,) appropriates—

"For expenses of editing and distributing the laws enacted by the Forty-sixth Congress, and for the expenses of editing and distributing the Statutes at Large of the Forty-sixth Congress, three thousand five hundred dollars."

The appropriations made in this act are apparently only for expenses for the fiscal year ending June 30, 1881; while the services covered by the voucher which has been allowed in the account of the disbursing agent of the State Department were rendered in the fiscal year ending June 30, 1879.

It is the general policy of the law to require a prompt settlement of all accounts. (Rev. Stats., 250; act March 3, 1875, 18 Stats., 418, sec. 5; act June 14, 1878, 20 Stats., 130, sec. 4; act June 20, 1874, 18 Stats., 110.) When, in an *annual* appropriation act, money is appropriated for official, quasi-official, or personal services, it can as a

general rule be paid therefor only when rendered within the year. (Wood's case, *ante* 1.) Under the appropriations in such acts making compensation for the performance of work under contracts, the money appropriated can generally be paid for work done during the year, or "to the fulfilment of contracts properly made during" the year, and to be completed within two years thereafter. (Arsenal case, *ante*, 147; Rev. Stats., 3679, 3685, 3690, 3732; act June 20, 1874, 18 Stats., 110, sec. 5; act March 3, 1875, 18 Stats., 418, sec. 5; 7 Op., 1, 14; 13 Op., 288; Harvey et al. *vs.* U. S., 8 Ct. Cls., 501; The Floyd Acceptances, 7 Wall., 666.)

Supplies are generally required for service during a fiscal year. The question whether appropriations made in an annual appropriation act can be used in paying for supplies furnished after the fiscal year for which the appropriation is made, is to be determined by the intention manifested in the act, and by the purpose for which the supplies are required. These will control the authority to make contracts.

If the *title* of the appropriation act of June 15, 1880, were decisive of the illegality of paying for services rendered in a different fiscal year any of the money therein appropriated for expenses for the fiscal year ending June 30, 1881, the appropriation for expenses of editing and distributing the laws and Statutes at Large of the Forty-sixth Congress could only be paid out for services rendered, or at least contracted for, in the fiscal year ending June 30, 1881, and the voucher now in question would have to be rejected; for there is no appropriation applicable to payment for the services rendered by Mr. James, except that made in the act of June 15, 1880. The title of an act is entitled to consideration in giving construction to it, but it is not conclusive. (Potter's Dwarries, 41; Broom, Leg. Max., 573; Hammersmith & Ry. Co. *vs.* Brand, L. R., 4 H. L. C., 171, 203; Eastern C. & L. B. Ry. Co. *vs.* Marriage, 9 H. L. Cas., 32; The Sussex Peerage, 11 Cl. & Fin., 143; 2 East, P. C., 1113; R. *vs.* Johnson, 29 St. Tr., 303; Sedgwick on Stats., 39, 41.) It has been said, indeed, that the title of a statute "is certainly no part of the law, and in *strictness* ought not to be taken into consideration at all." (Salkeld *vs.* Johnson, 2 Exch., 283; 8 H. L. Cas., 603 *h*; Claydon *vs.* Green, L. R., 3 C. P., 522.) But it is generally, and may properly be, taken into consideration, when the language used in the body of the act is not precise.

In this case the appropriation is "for expenses of editing * * * the laws enacted by the *Forty-sixth Congress*." The provision is comprehensive, and applies to all the laws of that Congress. It is these laws of which Mr. James edited a part; and the voucher in question is for payment for the rendition of this service.

The "golden rule" of construction is "to look at the precise words of the statute, and construe them in their ordinary sense only, if such construction would not lead to any absurdity or manifest injustice." (Broom, *Leg. Max.*, 574.) Under this rule, the precise words of the act of June 15, 1880, apply the appropriation therein in payment for the services now under consideration, even as against the words of the title of the act. The words of the title, "for other purposes," in fact, may cover this, as other provisions of the act. This construction is reasonable, too, in view of the fact that, unless this act makes an appropriation, there is none to pay for the services in question; and it follows the rule that *general* words are, in the absence of any provision to restrict them, to be understood in a *comprehensive* sense.

The voucher for payment of \$100 to Mr. James is allowed; and the account referred by the Fifth Auditor is certified as correct.

TREASURY DEPARTMENT,

First Comptroller's Office, December 24, 1880.

IN THE MATTER OF THE DATE UPON WHICH INTEREST SHOULD BEGIN TO RUN ON THE PERPETUAL TRUST-FUND FOR THE UTE INDIANS.—UTE CASE.

1. Since the act of March 3, 1871, no *treaty* could be made with an Indian nation or tribe within the United States.
2. *Agreements* with such nations or tribes may be made in pursuance of an act of Congress.
3. It is a general rule that, as to the rights of either Government under a treaty, such treaty takes effect from its date, to which the ratification relates back; but, so far as it operates on *individual rights*, the doctrine of relation does not apply, and the treaty takes effect from its final ratification.
4. The agreement authorized by the act of June 15, 1880, relative to the sale by the Ute Indians of their reservation in Colorado, and their settlement upon lands in severalty, is not a treaty.
5. Under said agreement and act, the annual interest to be distributed *per capita* to the Ute Indians, as the product of the perpetual trust-fund set apart for them by the Government, begins to run from the date of the ratification of the agreement.

For reasons frequently enforced in debates in Congress, running through some years prior to March 3, 1871, an act was passed of that date, the prohibition of which is carried into the Revised Statutes, as follows:

"SEC. 2079. No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by

treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March third, eighteen hundred and seventy-one, shall be hereby invalidated or impaired."

(16 Stats., 566; act June 22, 1874, c. 389, s. 3, vol. 18, p. 176; act June 10, 1876, c. 122, vol. 19, p. 58. See speech, January 26, 1869, in House Reps., 3d Sess. 40th Cong., App'x to Part 3, Cong. Globe, vol. 86, p. 77.* Wood *vs.* M. K. and T. R. Co., 11 Kansas, 329; Holden *vs.* Joy, 17 Wall., 223, and note; L. L. and G. R. R. Co. *vs.* U. S., 92 U. S., 733.)

Contracts with Indian tribes, ratified by act of Congress, were made after the passage of this act.

On the 6th of March, 1880, "the chiefs and head men of the confederated bands of the Utes" signed a paper, by which, in terms, it was said that they promised and agreed to procure the surrender of certain members of the nation to the United States for trial for alleged crimes; also, "to use their best endeavors with their people to procure their consent to cede to the United States" all the Indian right of occupancy in "the territory of the Ute reservation in Colorado;" and also, to remove to and settle in different localities in New Mexico and Utah.

The paper further says:

"The said chiefs and head men of the confederated bands of Utes promise to obtain the consent of their people to the cession of the territory of their reservation as above, on the following express conditions:

"Third. That in consideration of the cession of territory to be made by the said confederated bands of the Ute nation, the United States, in addition to the annuities and sums for provisions and clothing stipulated and provided for in existing treaties and laws, agrees to set apart and hold, as a perpetual trust for the said Ute Indians, a sum of money or its equivalent in bonds of the United States which shall be sufficient to produce the sum of fifty thousand dollars per annum, which sum of fifty thousand dollars shall be *distributed per capita to them annually forever.*"

This proposition was signed by nine chiefs and head men; witnessed by interpreters and Indian agents; but not signed by any person professing to bind the United States.

By "an act to accept and ratify the *agreement submitted* by the confederated bands of Ute Indians in Colorado, for the sale of their reservation in said State, and for other purposes, and to make the necessary

* This was the first speech ever made in Congress in opposition to the validity of Indian-treaty sales of public lands. It was followed up by others, and the effect was, that pending treaties for the sale of public lands at nominal prices were defeated, and that the operation of the homestead act was correspondingly enlarged. Efforts to silence this opposition were made by outside parties of a character not necessary now to describe; but the efforts were without effect. The act of March 3, 1871, forever settled the whole subject.

appropriations for carrying out the same," approved June 15, 1880, (21 Stats., 199, 203, 205,) it is recited and enacted as follows:

"Whereas certain of the chiefs and head men of the confederated bands of the Ute tribe of Indians, now present in the city of Washington, have agreed upon and *submitted to the Secretary of the Interior* an agreement for the sale to the United States of their present reservation in the State of Colorado, their settlement upon lands in severalty, and for other purposes; and

"Whereas the President of the United States *has submitted said agreement*, with his approval of the same, to the Congress of the United States *for acceptance and ratification*, and for the necessary legislation to carry the same into effect: Therefore,

"*Be it enacted*," &c.

The act then provides for sundry amendments in the terms of the contract, and makes other provisions, and then enacts:

"And after the said commissioners shall have performed the duties specifically assigned to them by this act, and such other duties as the Secretary of the Interior may require of them, they shall make a full report of their proceedings to the Secretary of the Interior, which shall set forth, among other things, the name of each person to whom they may have apportioned and allotted lands as herein provided for, with the name and condition of such person * * *.

* * * * *

"SEC. 5. That the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, set apart, and hold as a perpetual trust-fund for said Ute Indians, an amount of money sufficient at four per centum to produce annually fifty thousand dollars, which interest shall be paid *to them per capita in cash, annually*, as provided in said agreement.

* * * * *

"SEC. 9. That for the purpose of carrying the provisions of this act into effect, the following sums, or so much thereof as may be necessary, be, and they are hereby, appropriated * * *:

"For the payment of the expenses of the commissioners herein provided, the sum of twenty-five thousand dollars.

"For the cost of removal and settlement of the Utes, surveying their lands, building houses, establishing schools, building mills and agency buildings, purchasing stock, agricultural implements, and so forth, as provided in said agreement and in this act, the sum of three hundred and fifty thousand dollars.

"For the sum to be paid to said Ute Indians, *per capita*, [under the contract,] in addition to the sixty thousand dollars now due and provided for, the sum of fifteen thousand dollars.

* * * * *

"For the care and support of the Ute Indians in Colorado for the balance of the current fiscal year, the sum of twelve thousand dollars: *Provided*, That with the exception of the appropriation for expenses of the commissioners, the above appropriations shall become available only upon the ratification of said agreement by three-fourths of the male adult members of the Ute Indians as provided in this act, and the certification of such fact to the Secretary of the Treasury by the Secretary of the Interior.

"SEC. 10. *If the agreement as amended in this act is not ratified by three-fourths of the adult male Indians of the Ute tribes within four months from the approval of this act the same shall cease to be of effect after that day.*"

On the 18th of October, 1880, the Acting Secretary of the Interior addressed a letter to the Secretary of the Treasury, stating that the agreement referred to—

"Was ratified [by the Indians] on various days, from the 29th day of July, 1880, to the 11th day of September, 1880, both dates inclusive, and that the formal certificate of said ratification was signed by a quorum of the commission appointed under said act, at Alamosa, Colorado, on the 25th day of September, 1880, two days after the chairman of said commission had advised this [Interior] Department by telegraph of said ratification."

The Acting Secretary further says:

"I beg leave to state, that in the opinion of this Department the date at which interest, provided by the 5th section of said act, to be paid by the United States to the said Ute Indians, began to run, is June 15, 1880, the date of said act, because the ratification of the terms of the act by the Indians relates back to the date of the act itself."

On the 21st of October, 1880, the Secretary of the Treasury submitted the papers to the First Comptroller "for opinion as to the date when interest should commence on the amount set apart as a perpetual trust-fund for the Ute Indians, under section 5 of" the act approved June 15, 1880.

DECISION BY WILLIAM LAWRENCE, *First Comptroller* :

The agreement with the Ute Indians, which was made in pursuance of the act of Congress of June 15, 1880, (21 Stats., 199–205,) was finally signed by them on the 11th of September, 1880; and the formal ratification of the agreement by the commissioners of the United States took place September 25, 1880. It is stated as the opinion of the Department of the Interior that the interest on the perpetual trust-fund for the Utes, set apart and held for them, in pursuance of the act of Congress, by the Secretary of the Treasury, should begin to run from the date of the act, namely, June 15, 1880. This opinion cannot be concurred in.

In the construction of treaties between independent nations, it is a general principle of international law that, as respects the *rights of either Government* under it, "a treaty is considered as concluded and binding from the date of its signature," to which the ratification relates back. (Wheaton, *International Law*, Dana's ed., 336; *Davis vs. Parish of Concordia*, 9 How., 280; *Montault vs. U. S.*, 12 How., 47; *U. S. vs.*

Pillerin, 13 How., 9; U. S. *vs.* Heirs of Billieux, 14 How., 189; U. S. *vs.* Ducros, 15 How., 38; Hylton *vs.* Brown, 1 Wash. C. C., 343.) But where a treaty operates on *individual rights*, the principle of relation does not apply, and the treaty takes effect from its final ratification. (Huidekoper's Lessee *vs.* Douglass, 3 Cranch, 65; U. S. *vs.* Arredondo, 6 Pet., 749; Comm. of Penn'a *vs.* Cox, 4 Dall., 199; U. S. *vs.* Percheman, 7 Pet., 52; Haver *vs.* Yaker, 9 Wall., 32.)

The obligation of the Government as to the payment of interest, though arising from a promise to the confederated bands of the Ute nation, is to distribute to certain *individual* Indians a sum to be due each annually. The obligation creates *individual rights* in the Indians, and, hence, dates from the final ratification thereof. The agreement is not a *treaty*. If so-called Indian treaties could ever have risen to the dignity of treaties properly so called, that capacity certainly ceased with the act of March 3, 1871. The Indians had then, if not long prior thereto, been so far subjected to the authority of the Government, that they could no longer be regarded as treaty-making nations.

The paper signed by the chiefs and head-men of the Utes on the 6th of March, 1880, was not *then* a contract, for no agent of the Government had authority to make such a contract with them. At most, it was a mere *proposition* by the Indians, which became a contract on the day when it was formally declared to be ratified by the commissioners appointed under the act of Congress. (1 Parsons, Cont., 6th ed., 476; Honeyman *vs.* Marryatt, 6 H. L. Cas., 112.) Like all analogous contracts made on behalf of the Government, it could only take effect from its consummation, since there is nothing in it declaring a purpose to give it a retroactive effect as to the date when interest should commence to run on the perpetual trust-fund.

A treaty between independent nations takes effect as from the date of its signature, to which the ratification relates back, because this carries out the *intention* of the respective governments. Each at that date gives assent, and it becomes a contract, inchoate, awaiting final ratification. But the doctrine of relation cannot apply in this case; for the act of Congress of June 15, 1880, and the terms of the agreement submitted by the confederated Utes, all look to a future time, when the contract would be consummated and take effect. The intention to fix the liability of the Government to perform its obligations *in futuro* is apparent. No one act in execution of the contract could be done until the final ratification by the Indians. It might never have become obligatory as a contract. Interest is generally paid by force of a statute, or contract, or usage as evidence of a contract. It is a general rule that

"whenever the debtor knows precisely what he is to pay, and when he is to pay, he shall be charged with interest if he neglects to pay." (People *vs.* New York, 5 Cowen, 334.)

Interest is allowed according to the terms of a contract not in violation of law; or as damages, the measure of which, when not fixed by contract, is generally by statute, for default in paying when payment should have been made. The Government could not be in default in anything until the contract was finally agreed to by the Indians; and hence no liability could, in the absence of clear words creating a retroactive liability, begin to accrue until that period. It is well settled that the Government never becomes liable for the payment of interest, except by its own consent or agreement in pursuance of treaty or other law. (U. S. *vs.* McKee, 1 Otto, 450; "Ordinances for settling accounts between the United States and individual States," May 7, 1787; Laws U. S., ed. 1815, p. 662; act March 3, 1863, 12 Stats., 765, sec. 7, Rev. Stats., 1091; Lawrence's Law of Claims against Governments, 220, House Reps., No. 134, 2d Sess. 43d Cong.) Neither general interest statutes nor usages control or fix the liability of the Government in this respect. (Richey's case, *ante*, 85.) When, therefore, in this case the liability of the United States to pay interest is to be determined, it must rest on the words of the contract and statute, and the acts in pursuance thereof, as affecting the individual rights of the members of the Ute tribes who are to be the beneficiaries.

The interest on the perpetual trust-fund created by the act of June 15, 1880, does not begin to run from the date of the act, but from the date of the ratification of the agreement by the requisite number of the Ute Indians.

TREASURY DEPARTMENT,

First Comptroller's Office, December 27, 1880.

IN THE MATTER OF PAYING OUT OF THE APPROPRIATIONS FOR CONTINGENT EXPENSES OF CONSULATES THE SALARIES OF CONSULAR CLERKS NOT OTHERWISE PROVIDED FOR.—CONSULAR CLERKS' CASE.

1. The act of June 11, 1874, (18 Stats., 70), so far as it relates to the employment of clerks for consuls-general and consuls, is an *enabling act*, giving authority to employ clerks, and not the limitation of a pre-existing power to so employ.
2. The authority so given is subject to the limitation imposed by section 3682 of the Revised Statutes, which is *declaratory* of a general common-law rule of construction.
3. The limitation imposed by section 3682 applies as well to consuls-general and consuls, who are not specified in the act of June 11, 1874, as to those who are.

In the settlement of the accounts for the contingent expenses of United States consulates, the question has arisen whether the salaries of office clerks at consulates which are not specified in the act of Congress of June 11, 1874, "making appropriations for the consular and diplomatic service of the Government for the year ending June thirtieth, eighteen hundred and seventy-five, and for other purposes" (18 Stats., 66, 70), can be paid from the appropriations for contingent expenses of consulates.

DECISION BY WILLIAM LAWRENCE, *First Comptroller*:

The permanent provisions of law which govern the allowance and expenditure of the contingent expenses of United States legations and consulates are chiefly section 1706 of the Revised States, which empowers the President to "allow consuls-general, consuls, and commercial agents, who are not allowed to trade, actual expenses of office-rent, not to exceed, in any case, twenty per centum of the amount of the annual compensation allowed to such officer, whenever he shall think there is sufficient reason therefor;" section 1748, which authorizes the President to "provide at the public expense all such stationery, blanks, record and other books, seals, presses, flags, and signs, as he shall think necessary for the several legations, consulates, and commercial agencies in the transaction of their business;" and section 1752, authorizing the President to "prescribe such regulations, and make and issue such orders and instructions, not inconsistent with the Constitution or any law of the United States, in relation to the duties of all diplomatic and consular officers, the transaction of their business, the rendering of accounts and returns, the payment of compensation, the safe-keeping of the archives and public property in the

hands of all such officers, the communication of information, and the procurement and transmission of the products of the arts, sciences, manufactures, agriculture, and commerce, from time to time, as he may think conducive to the public interest. It shall be the duty of all such officers to conform to such regulations, orders, and instructions."

For the expenses incurred pursuant to these provisions an annual appropriation is made; as, for example, in the act of May 14, 1880, "making appropriations for the consular and diplomatic service of the Government for the year ending June thirtieth, eighteen hundred and eighty-one, and for other purposes" (21 Stats., 133, 134), there is appropriated—

"For contingent expenses of foreign intercourse proper, and of all the missions abroad, eighty thousand dollars."

The act of Congress of June 11, 1874, provides "that there shall be allowed for the hire of clerks, when actually expended therefor, as follows:

"To the consul-general of Havana and consul at Liverpool, each a sum not exceeding the rate of three thousand dollars for any one year."

The act then enumerates *other* but *not all* of the consuls-general and consuls, with similar provisions for each of those enumerated.

The act also appropriates:

"For contingent expenses of foreign intercourse proper, and of all the missions abroad, such as stationery, book-cases, arms of the United States, seals, presses, and flags, rent, freight, postage, and other necessary miscellaneous matters, including loss by exchange, one hundred and thirty-one thousand eight hundred and fifty dollars." (18 Stats., 70.)

Similar appropriations have been made annually since.

Section 3682 of the Revised Statutes prohibits the expenditure or payment for official or clerical compensation of any moneys appropriated for contingent, incidental, or miscellaneous purposes. This prohibition applies to *all* clerks and persons performing clerical services for consuls, whether enumerated in the act of June 11, 1874, or not. The only ground upon which any doubt can arise is, that there are consuls of the United States other than those specified in that act. The circumstance that the act of 1874 specifies certain consuls and fixes a limit to the compensation for the clerks of each, affords, however, no warrant for holding that as to consuls not so specified, and clerical compensation not so limited, there is, in the absence of other provision for them, no restriction upon the payment of clerical compensation out of the appropriations for the contingent expenses of consulates. Section 3682 is a prohibition of the use of contingent

funds for the payment of salaries to clerks as well of consuls named in the act of 1874 as of others not so named. Being general in its terms, the rule of construction applies: *Generalia verba sunt generaliter intelligenda*.

The act of 1874 did not change the effect of section 3682. As to the consuls specified, it was not designed as a limitation on the authority to employ clerks, but rather as an authority to employ them. While the authority is given, it is also in terms necessarily, or at least properly, limited. It does not extend beyond the consuls specified in the act. All authority is derived from law. (The Floyd Acceptances, 7 Wall., 676; Inspectors' case, *ante*, 207.)

The decision in the Clerk's case, *ante*, 305, 306, is upon the same point involved in the present case, and is based upon the same principle of statutory construction which is here applied.

In adjusting the accounts of consuls-general and consuls, no vouchers for the payment of clerical compensation from the appropriations for contingent expenses will be allowed.

TREASURY DEPARTMENT,

First Comptroller's Office, December 31, 1880.

**IN THE MATTER OF THE ALLEGED INCOMPATIBILITY OF
THE OFFICE OF FINANCIAL CLERK IN THE INTERIOR
DEPARTMENT WITH A SPECIAL AGENCY OF THE INDIAN
OFFICE.—BENDER'S CASE, (SECOND.)**

1. On balances certified by the Second Comptroller, the right of the First Comptroller to review questions of law arising thereon is not restricted to questions touching the jurisdiction of the Second Comptroller over the accounts on which the balances were found.
2. Where the head of the Interior Department, in executing an Indian appropriation act, appoints a special agent to receive supplies for Indians, such agency is not an office.
3. Executive officers may, when necessary, in a collateral inquiry, ascertain whether officers have been *ousted* by a judicial proceeding, or been removed, or have resigned.
4. An officer who has asserted a title to an office which has been recognized by the appointing power is *estopped* from denying such title in preferring a claim which would be valid only on the ground that he was not an officer.
5. When an officer is so estopped, the accounting officers have, as a general rule, no authority to waive the estoppel and thus admit a liability against the Government.

6. When a clerk in an executive department is appointed by the head thereof as special agent to carry out the purposes of an appropriation act, or make investigations necessary to execute laws, such appointment is not an *amotion* of the clerk, nor is his acceptance of it a resignation of his office of clerk.
7. It was a principle of the ancient common law that no man could hold two offices; and so the Statute of Westminster 2, chap. 25, declared: but this has been modified by the modern common law, and by many statutes.
8. The general rule of the common law as to incompatibility of offices now is, that one person cannot hold two offices when one is subject to the control, jurisdiction, or appointment of the incumbent of the other.
9. The position of special agent to receive supplies under an Indian appropriation act is not incompatible with the office of clerk when both appointments are made by the same officer and subject to his control.
10. The First Comptroller has authority, before a draft of the Treasurer in favor of claimant, which has been issued on a warrant for the payment of the claim, is delivered to the claimant or payee, to revoke the countersignature of such warrant when made inadvertently, or when facts affecting the validity of the settlement on which the warrant was granted have been discovered.
11. The proceedings stated which are necessary in such case.

August 10, 1880, the Acting Secretary of the Interior granted leave of absence, without pay, for fifty days, from and including August 12, to Joseph T. Bender, financial clerk in the office of Indian Affairs, and on August 11 appointed him special agent of the office, to date from August 12, to attend to the reception of Indian supplies at, and their distribution from, San Francisco, with authority there to purchase special supplies, and with compensation fixed at \$10.50 per day and necessary travelling expenses, as per Interior-Department order of March 24, 1879. He proceeded to New York, where supplies had been recently purchased, and, on August 13, was recalled and his appointment as special agent revoked. August 20, 1880, an account against the United States, in favor of Mr. Bender, was presented to the Second Auditor of the Treasury Department for four days' services, August 12 to 15, inclusive, at \$10.50 per day (\$42) and items of travelling expenses in addition. The Second Auditor returned the account to the Commissioner of Indian Affairs, calling his attention to sections 170, 1764, 1765, 1768, and 2077, Revised Statutes. The Commissioner replied that, as Mr. Bender was on leave of absence without pay, the sections cited were not applicable. The Auditor then suggested that leave without pay did not *vacate the office*, nor warrant payment of *compensation* to Bender as special agent.

With a view to meet the objections, Mr. Bender, on the 3d of September, tendered a resignation of his office of financial clerk, to take effect August 11. This was accepted September 4, the leave of absence was revoked, and Mr. Bender was reappointed as financial clerk, to take effect as of the 16th of August.

The Auditor declined to state an account for the *per diem* compensation, but stated one allowing travelling expenses and hotel expenses, in accordance with the general order of the Secretary of the Interior of July 1, 1874, which allows:

“Hotel expenses, not exceeding \$5 per day, when the detention is incident to or necessary for the performance of the duties for which the travel is ordered.” (See also Rev. Stats., 2077.)

The Second Comptroller decided that the full amount claimed as special agent was due, and he certified a balance accordingly to the Secretary of the Interior, who has drawn his requisition in favor of Mr. Bender for the amount, viz., \$63.60, payable out of appropriation for “purchase of Indian supplies.” (Act May 11, 1880.) The requisition has been countersigned by the Second Comptroller; and, in usual course of business, it would have been “registered” in the Auditor’s office and referred to the Secretary of the Treasury for his warrant. But the Acting Second Auditor has sent the requisition unregistered, with a letter dated October 2, 1880, to the Secretary of the Treasury, expressing a doubt whether a warrant to pay the account would be “warranted by law,” and “whether the Secretary of the Interior had any authority to appoint Mr. Bender a special agent” (Rev. Stats., 2067), and stating that if not, “then the claim of Mr. Bender is barred by section 1765, Revised Statutes.”

On October 4, 1880, the Secretary of the Treasury referred the papers “to the First Comptroller for an expression of his views on the points raised by the Second Auditor.”

The First Comptroller prepared an opinion, which is printed in this volume, pages 317 *et sequor*, in which he held that the Secretary of the Interior had authority to appoint Mr. Bender as special agent, and to authorize the payment of his travelling expenses and hotel-bills; that the resignation of Mr. Bender as clerk could not have any retroactive effect; that no compensation for services as such special agent could lawfully be paid to him; that when the Second Comptroller has regularly certified a balance due to a claimant, the Secretary of the Treasury, notwithstanding section 191 of the Revised Statutes, has authority, under sections 248 and 3675 of the Revised Statutes, before issuing a warrant in payment thereof, to decide whether such warrant would be “in pursuance of appropriations by law;” that the First Comptroller has authority, by virtue of sections 269 and 3675, to decide whether, when granted, it is “warranted by law;” that section 191 of the Revised Statutes does not impair the authority given to the First Comptroller by section 269 to determine whether warrants granted by the Secretary are “warranted by law;” but that no final action could be taken on the papers presented, because they were not in the regular course of business before the First Comptroller.

The opinion concluded as follows:

“The papers will be returned to the Honorable Secretary of the Treasury, who will be advised to return them to the Second Auditor, so that the requisition of the Secretary of the Interior may be registered by the Auditor, as the law requires. And the Secretary of the Treasury will be further advised, that when the requisition so registered

shall be received by him it should be returned, with the views of this office, to the Secretary of the Interior, so that the latter may, if he shall deem proper, again submit the whole subject to the Second Comptroller, under section 191 of the Revised Statutes; or, if not, that Mr. Bender may present a new account."

On the 14th December, before the full opinion was printed, the general conclusions reached by the First Comptroller were transmitted to the Secretary of the Treasury.

On the 17th January, 1881, the Secretary of the Interior submitted the papers for reconsideration to the Second Comptroller.

On the 19th January, the Second Comptroller addressed a letter to the Secretary of the Interior, in which, among other things, he says:

"In returning the said requisition, it affords me pleasure to state that I coincide with nearly all the conclusions stated by the honorable First Comptroller in his letter of date December 14, 1880.

"There is, however, one feature of Mr. Bender's case that is wholly overlooked in the statement of the case transmitted by the Acting Second Auditor to the Secretary of the Treasury, and by the Secretary to the First Comptroller, namely, that *by Mr. Bender's acceptance of the new and incompatible position of special agent the clerkship became vacant.*

"While Mr. Bender was a clerk in the Interior Department, at a salary of \$2,000, he was appointed to the more lucrative position of special agent, at the compensation of \$10.50 per day. Thereupon he accepted the latter position, entered upon the discharge of its duties, and if there is any objection to his receiving the compensation, it is because of incompatibility of the two positions.

"It is well settled that when an incumbent of an office accepts a position which is incompatible with the one held by him, the acceptance of the new position is an abandonment or resignation of the office theretofore held, and whether the incumbent intended a resignation is not material. The office becomes vacant upon the acceptance of the incompatible position. (People *vs.* Carrique, 2 Hill, 93; Milward *vs.* Thatcher, 2 T. R., 87; Regent of University *vs.* Williams, 9 Gill & Johns., 365; Angell and Ames on Corporations, 443, par. 434; 1 Dillon on Corporations, par. 164.)

"According to the ruling in Rex *vs.* Pateman, 2 T. R., 777, the act of the Secretary of the Interior, in appointing Mr. Bender special agent, was in itself an *amotion*, and had the effect to remove him from the position previously held.

"It is said the Secretary of the Interior had power to detail Mr. Bender as clerk to perform the duties of special agent; but that does not meet the present question, because the Secretary did not detail him to that duty as clerk; the transaction was a new appointment to a new position, and upon its acceptance Mr. Bender ceased to be clerk, whether he so intended or not. Hence sections 1763, 1764, and 1765 of the Revised Statutes can have no connection with Mr. Bender's right to \$10.50 per day in the new position to which he was appointed.

"Section 2, art. 2, of the Constitution of the United States provides that 'Congress may, by law, vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of Departments,' and I think the Hon. First Com-

troller correctly holds, under paragraphs 2067 and 3614 of the Revised Statutes, that Congress has authorized the Secretary of the Interior to appoint special agents. I make no question but that the Secretary of the Treasury, before issuing a warrant, and the First Comptroller before countersigning it, must judge, each for himself, whether the Second Comptroller had jurisdiction of the account when he decided and certified as to what balance was due. If the Second Comptroller acted without jurisdiction, his decision is void and a nullity; in that case neither the Secretary of the Treasury nor even a private citizen can be bound by it.

* * * * *

“Upon a careful review of the points discussed in this case, I think the former decision of this office would not have been questioned if attention had been invited to the point that the acceptance of the new position vacated the clerkship, and that no ground exists for questioning the correctness of the balance heretofore stated. Treating this as a case resubmitted under section 191 of the Revised Statutes, I therefore have the honor to return it reaffirming the balance heretofore certified.”

On the 22d January, 1881, the Secretary of the Interior addressed a letter to the Secretary of the Treasury, in which he says:

“I have the honor to be in receipt of your letter of the 10th instant, returning Interior requisition No. 1498, in favor of Joseph T. Bender, for \$63.60, and transmitting copies of opinion of the First Comptroller, dated respectively the 14th and 31st ultimo, in which are set forth his reasons why he considers that said claim, in its present form, is not a proper one for payment, and in which he suggests a restatement of the same, or its reference to the Second Comptroller, for consideration under section 191 of the Revised Statutes.

“In accordance with the latter suggestion, the said requisition, and copies of the several communications herein referred to, were transmitted to the Second Comptroller for consideration under the section of the statutes named, and I now have the honor to transmit herewith, for your information and consideration, the opinion of that officer, and I respectfully recommend that the requisition, which is also enclosed herewith, be honored with as little delay as practicable.”

On the 24th of January, this letter and the opinion of the Second Comptroller were, by the Secretary of the Treasury, “referred to the First Comptroller for his information.”

On the 27th of January, 1881, a warrant was issued for the payment of the claim.

When the warrant was presented to be countersigned by the First Comptroller, the question whether it was “warranted by law” was regularly before him for decision. The warrant was, however, inadvertently countersigned by the Deputy as Acting First Comptroller, and a Treasury draft in payment was, January 28, prepared in the office of the Treasurer of the United States; but before its delivery the countersignature of the warrant by the Deputy was, January 31, re-

voked by the Comptroller, with an order that the amount of the draft be repaid to the credit of the proper appropriation.*

* The warrant and draft, with indorsement, are as follow :
OFFICE OF THE SECRETARY OF THE TREASURY,
Division of Warrants, Estimates, and Appropriations. }
Form 71.

TREASURY DEPARTMENT. B.
INTERIOR. To the TREASURER OF THE UNITED STATES, Greeting :
[SEAL.] Pay to Joseph T. Bender, Indian Office, Washington, D. C., or order,
Settlement warrant. to be charged to the appropriations named in the margin, sixty-three
J. B. dollars and sixty cents, due ——— on settlement, pursuant to requisition No. 1498, of the Secretary of the Interior, dated October 1, 1880, countersigned by the Second Comptroller of the Treasury and registered by the Second Auditor. And for so doing this shall be your
WARRANT.
No. 321. Given under my hand and the seal of the Treasury Department
G. O. [SEAL.] this 27th day of January, in the year of our Lord one thousand
eight hundred and eighty-one, and of Independence the one
hundred and fifth.
\$63 60 W. F. McL. J. K. UPTON,
Assistant Secretary.

2 A 2008. APPROPRIATIONS.

Civilization Fund.....	
Interest on avails of Osage diminished reserve lands in Kansas.....	
Fulf. treaties with Sisseton, Wabpeton, and Santee Sioux of Lake Traverse and Devil's Lake.....	
Contingencies, Indian Department.....	
81—Telegraphing and purchase of Indian supplies.....	\$63 60
Transportation of Indian supplies.....	
Support of Apaches of Arizona and New Mexico.....	
Support of Arapahoes, Cheyennes, Apaches, Kiowas, Comanches, and Wichitas.....	
Support of Arickarees, Gros Ventres, and Mandans.....	
Support of Assinaboines in Montana.....	
Support of Chippewas of Lake Superior....	
Support of Chippewas of Red Lake and Pembina.....	
Support of Confederated Band of Utes.....	
Support of Flatheads and other confederated tribes.....	
Support of Gros Ventres in Montana.....	
Support of Indians of Central Superintendency.....	
Support of Indians at Fort Peck Agency...	
Support of Indians on the Malheur Reservation.....	
Support of Mixed Shoshones, Bannocks, and Sheepaters.....	
Support of Nez Perces of Joseph's Band...	
Support of Northern Cheyennes and Arapahoes.....	
Support of schools not otherwise provided for.	
Support of Shoshones and Bannocks.....	
Support of Sioux of different tribes, including Santee Sioux of Nebraska.....	
Support of Sioux, Yankton tribe.....	
Support of Tabeguache, Muache, Capote, Weeminuche, Yampa, Grand River, and Uintah Bands of Utes.....	
Support of Wichitas and other affiliated bands.	
D. McL. C. J. W.	

J. M. W. 28.
Countersigned :
J. TARBELL,
Act'g First Comptroller.
M. E. P. 28.
Registered :
W. P. TITCOMB,
Asst. Register.

OFFICE OF THE
TREASURER OF THE UNITED STATES.
28. Received for this warrant the following draft :
No. 12662 on Treasurer.
No. —, on —.
Mailed —.

FIRST COMPTROLLER'S OFFICE, January 31, 1881.
If, at the time this warrant was countersigned, I had been advised of certain facts of which I have since been informed, I would not have countersigned.
J. TARBELL,
Deputy Comptroller.

OPINION BY WILLIAM LAWRENCE, *First Comptroller*:

The questions involved in the papers referred by the Secretary of the Treasury to the First Comptroller were, with probably a single exception, somewhat fully discussed in the former opinion on Mr. Bender's case. (*Ante*, 317.) The whole subject has been again considered with much care, and it is believed that the conclusions reached in that opinion are fully supported by the statutes, by reason, and by authority.

Upon one of the questions therein considered—the duty of the First Comptroller to countersign only those warrants which are “warranted by law”—it may be said again that there is one duty required of the First Comptroller which is not required of the Second Comptroller. The former is required to *countersign* all warrants for the payment of money from the Treasury; the latter performs no such duty. The First Comptroller, in the discharge of this duty, is required to countersign only those warrants which he shall find to be “warranted by law.” (Rev. Stats., 191.) This statutory requirement means something or nothing. By every rule of reason and construction, it must be held to have a purpose, and to give authority to judge whether warrants are in every sense “warranted by law.”

The laws which confer and impose upon the Treasury Department these fiscal powers and duties form one system, and must be construed together, being *in pari materiâ*. (*Billingsley vs. State*, 14 Md., 369.)

A simple illustration may show one of the cases which might require the First Comptroller to refuse to countersign a warrant issued on a balance certified by the Second Comptroller. Suppose a balance is certified by the Second Comptroller under a special act of Congress

The countersigning having been done through inadvertence, it is hereby revoked. The amount will be repaid to the credit of the appropriation.

WM. LAWRENCE,
Comptroller.

Draft }
No. B 12662. }
P—D—. M. K.

On Interior Warrant No. 321.

TREASURY OF THE UNITED STATES,
Washington, D. C., January 28, 1881.

Pay to the order of Joseph T. Bender sixty-three and $\frac{60}{100}$ dollars.

Registered January 28, 1881:

W. P. TITCOMB,
Assistant Register of the Treasury.

To TREASURER U. S., }
($\$63\frac{60}{100}$) Washington, D. C. }

JAS. GILFILLAN.
Treasurer of the United States.

[Indorsement.]

FIRST COMPTROLLER'S OFFICE, January 31, 1881.

The U. S. Treasurer will be allowed credit on depositing the amount of this draft to the credit of the Appropriation for Telegraphing and purchase of Indian Supplies, 1881.

WM. LAWRENCE,
Comptroller.

authorizing the payment of a fixed sum, and, by clerical error or construction of the act, a larger sum is certified and included in the warrant for the payment of the balance, is the First Comptroller bound to countersign such warrant, knowing it to be for a sum in excess of the amount authorized by law? Clearly not. In such case the Second Comptroller would have jurisdiction; yet the First Comptroller would review questions of law other than those relating to jurisdiction.

There is no authority vested in either executive or judicial officers to allow a claim, of which the payment is prohibited by law. (*U. S. vs. Smith*, 1 Bond, C. C., 68.)

It is understood that the learned and able Second Comptroller, in his opinion, practically concedes that if Mr. Bender *was a clerk* in the office of Indian Affairs, while acting as special agent under the appointment of the Secretary of the Interior, he is prohibited by section 1765 of the Revised Statutes from receiving *compensation* for services as such agent. (*Hoyt vs. U. S.*, 10 How., 141; *U. S. vs. Shoemaker*, 7 Wall., 342; *Stansbury vs. U. S.*, 8 Wall., 34.) So far there is no difference of opinion between the two offices.

But it is maintained by the Second Comptroller, in an opinion which is entitled to the highest consideration and respect, "that by Mr. Bender's acceptance of the new and *incompatible* position of special agent *the clerkship became vacant*;" that the acceptance of the position of agent was "an abandonment or resignation" of the office of clerk; that the appointment to the agency "was in itself an *amotion*, and had the effect to remove" Mr. Bender from the office of clerk.

If this view be correct, then Mr. Bender is entitled to the *compensation* allowed him for services as agent; but if not correct, then he is not so entitled.

This presents the sole question whether the *acceptance of the agency was a resignation* of the office of clerk; or, what is the same in effect, whether the appointment to and acceptance of the agency was an *amotion* from the office of clerk.

It is with great reluctance, and only after mature consideration, that the opinion which maintains the affirmative cannot be accepted as correct.

It is by no means strange that those intrusted with the decision of legal questions and exercising *quasi* judicial functions should sometimes differ, since the justices of the highest courts do the same. A difference of opinion, therefore, implies no disparagement. It is very gratifying that this is the only difference which has arisen thus far in administration during the incumbency of the present Comptrollers.

I. It is due to the subject of this discussion and to all concerned that some of the reasons for the ground taken by this office should be given.

First of all, it is clear that the special agency was not *an office*. (U. S. *vs.* Germaine, 99 U. S., 511; Wood's case, *ante* 8; Herndon's case, *Id.*, 49; Wade's case, *Id.*, 302; Bender's case, *Id.*, 317; Com. *ex rel.* Bache *vs.* Binns, 17 Serg. and R., 220; Collins' case, 15 Ct. Cls., 22; 15 Op. Att.-Gen., 110, 188; Rev. Stats., 183.) An office must be created by law. (Rev. Stats., 1760.) An officer can, within the Constitutional limitation, be authorized by statute to appoint officers, and thus to create offices; but this will be a legislative, not an executive creation. An officer must take an oath of office. (Const., art. 6; Rev. Stats., 1756.) Agents are never required to take oaths of office. Long usage has settled this.

The law did not provide for any other agent or agency to perform the duties to which Mr. Bender was assigned; so that, in accepting the special agency, he did not fill any office or position by law assigned to any other person. There has been no *judicial ouster* of Mr. Bender from his office of clerk. The office is not to be deemed vacated, unless executive officers can declare it, in a collateral proceeding such as this is, to be so.

Executive officers may, in such case as this, ascertain and decide whether there has been a *judicial ouster*, a *resignation*, or an *amotion*, followed by such conditions as show that a party is not an officer *de facto*. (See Evans' case, 2 Lawrence, Compt. Dec., 1; Angell & Ames, Corp., 10th ed., sec. 434; Willcock on Mun. Corp., 240; Gabriel *vs.* Clarke, Cro. Car., 138; Verrior *vs.* Sandwich, 1 Sid., 305; Rex *vs.* Godwin, Doug., 383, *n.* 22; Milward *vs.* Thatcher, 2 Term R., 87; Rex *vs.* Pateman, 2 Term R., 779.) That Mr. Bender was regarded by himself and the Secretary of the Interior as a clerk *de jure* and *de facto*, during the time he was special agent, seems quite certain, because he *resigned* on the 3d of September, and his resignation was accepted by the power that appointed him. Since the acts of an officer *de facto* are valid as respects the public and third persons, and such officer is generally entitled to the salary or fees authorized by law, he must generally be subject to the limitations imposed by section 1765 of the Revised Statutes on his right to extra compensation. (Hunter's case, *ante*, 151.) In such a state of facts, how can Mr. Bender, when making the present claim for compensation, deny that he was a clerk while rendering the services upon which the claim is based? Is he not estopped from doing so? And if he is so estopped, how can the

accounting officers of the Treasury Department waive the estoppel to the prejudice of the Government? (*Andrae vs. Redfield*, 12 Blatchf. C. C., 407.) Or, if Mr. Bender could be regarded as an officer *de facto* merely, how can he now claim exemption from the application of section 1765?

- But, aside from this, Mr. Bender's acceptance of the special agency was not a *resignation* of his office of clerk; and it was not so, for several reasons:

1. Usage has settled this question against the theory advanced by the Second Comptroller, that the acceptance by Mr. Bender of the special Indian agency worked a vacation of his clerkship. In every one of the Executive Departments, for many years, if not from the foundation of the Government, it has been usual for heads of the Departments to select clerks, and detail or appoint them as special agents to attend to business required in the execution of the laws. Such selections have been necessary to secure the valuable experience which clerks have acquired in particular branches of the public service. Yet, never in any case has any court, or executive officer, decided that the acceptance of such agency has been deemed a resignation of a clerkship. Many examples of such appointments are found in the books, and vastly more in the records of the Departments. (*Birch's case*, *ante*, 155; 1 Op., 302; 4 Op., 248; 10 Op., 435; 14 Op., 419; 15 Op., 286, 533; *Stansbury vs. United States*, 8 Wall., 37; *Neilson vs. Lagow*, 12 How., 107; *United States vs. Macdaniel*, 7 Pet., 1; *United States vs. McCall*, Gilpin, 571.) Such details or appointments are recognized by law. (Rev. Stats., 183, 2067, 2651, 3614.)

In the Treasury Department, clerks have been, in the past three years, sent as special agents to distant points to make investigations in the number following: In the fiscal year 1878, eighteen; in 1879, fourteen; in 1880, eighteen; besides others for other purposes; and yet in all cases they were paid their several salaries as clerks from the regular appropriations for that purpose; while their actual expenses incurred on special duty were paid from the appropriations for the service under which they respectively acted. The long usage, in pursuance of which clerks have been so detailed and paid, is sufficient evidence of what the law is. (*Reporter's case*, *ante*, 313.)

It is too late now, and would be productive of too much controversy, to declare that all the clerks thus sent on special duty had vacated their offices, and had unlawfully received the salaries paid them. It would cripple and embarrass the public service to declare authoritatively that every clerk is out of office when he undertakes, as special

agent, a public service, the performance of which may be an absolute necessity.

2. The power to select clerks and appoint them as special agents, with a right to hold at the *same time* their respective clerkships, is recognized by section 183 of the Revised Statutes, which reads:

“Any officer or clerk of any of the Departments, lawfully detailed to investigate frauds or attempts to defraud on the Government, or any irregularity or misconduct of any officer or agent of the United States, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation.”

The Commissioner of Pensions is expressly authorized by statute to detail any of the clerks in his office to investigate any suspected attempts to defraud the United States, in or affecting the administration of any law relative to pensions (Rev. Stats., 474); and appropriations are made to pay the actual and necessary expenses of clerks so detailed. (21 Stats., 232.)

3. Congress has specifically provided by law for those cases in which it was deemed necessary to exclude officers from holding more than one of two different offices.

Thus, the Revised Statutes provide as follows:

“SEC. 628. No marshal or deputy marshal of any of the courts of the United States shall hold or exercise the duties of commissioner of any of the said courts.”

“SEC. 1222. No officer of the Army on the active list shall hold any civil office, whether by election or appointment, and every such officer who accepts or exercise the functions of a civil office shall thereby cease to be an officer of the Army, and his commission shall be thereby vacated.

“SEC. 1223. Any officer of the Army who accepts or holds any appointment in the diplomatic or consular service of the Government shall be considered as having resigned his place in the Army, and it shall be filled as a vacancy.”

See also secs. 177, 178, 179, 628, 1224, 2062, 2063; act of March 3, 1875, 18 Stats., 512; Const., art. 1, sec. 6, cl. 2; art. 2, sec. 1, cl. 2; art. 14, sec. 3.

It is, as a general rule, settled beyond all controversy that, as the Attorney-General has declared, “If an officer holds two distinct commissions, and thus two distinct offices, he may receive the salary for each,” except, of course, in those cases in which the *statute* prohibits any one person from holding more than one of certain specified offices. (5 Op., 765; 15 Op., 307; *Converse vs. U. S.*, 21 How., 463; *Collins' case*, 15 Ct. Cls., 38; *Wade's case*, *ante*, 302; *Herndon's case*, *ante*, 49.)

If one person may accept two offices, and take the salaries of both, there can be no legal *incompatibility* in the offices so held. While en-

6. When a clerk in an executive department is appointed by the head thereof as special agent to carry out the purposes of an appropriation act, or make investigations necessary to execute laws, such appointment is not an *amotion* of the clerk, nor is his acceptance of it a resignation of his office of clerk.
7. It was a principle of the ancient common law that no man could hold two offices; and so the Statute of Westminster 2, chap. 25, declared: but this has been modified by the modern common law, and by many statutes.
8. The general rule of the common law as to incompatibility of offices now is, that one person cannot hold two offices when one is subject to the control, jurisdiction, or appointment of the incumbent of the other.
9. The position of special agent to receive supplies under an Indian appropriation act is not incompatible with the office of clerk when both appointments are made by the same officer and subject to his control.
10. The First Comptroller has authority, before a draft of the Treasurer in favor of claimant, which has been issued on a warrant for the payment of the claim, is delivered to the claimant or payee, to revoke the countersignature of such warrant when made inadvertently, or when facts affecting the validity of the settlement on which the warrant was granted have been discovered.
11. The proceedings stated which are necessary in such case.

August 10, 1880, the Acting Secretary of the Interior granted leave of absence, without pay, for fifty days, from and including August 12, to Joseph T. Bender, financial clerk in the office of Indian Affairs, and on August 11 appointed him special agent of the office, to date from August 12, to attend to the reception of Indian supplies at, and their distribution from, San Francisco, with authority there to purchase special supplies, and with compensation fixed at \$10.50 per day and necessary travelling expenses, as per Interior-Department order of March 24, 1879. He proceeded to New York, where supplies had been recently purchased, and, on August 13, was recalled and his appointment as special agent revoked. August 20, 1880, an account against the United States, in favor of Mr. Bender, was presented to the Second Auditor of the Treasury Department for four days' services, August 12 to 15, inclusive, at \$10.50 per day (\$42) and items of travelling expenses in addition. The Second Auditor returned the account to the Commissioner of Indian Affairs, calling his attention to sections 170, 1764, 1765, 1768, and 2077, Revised Statutes. The Commissioner replied that, as Mr. Bender was on leave of absence without pay, the sections cited were not applicable. The Auditor then suggested that leave without pay did not *vacate the office*, nor warrant payment of *compensation* to Bender as special agent.

With a view to meet the objections, Mr. Bender, on the 3d of September, tendered a resignation of his office of financial clerk, to take effect August 11. This was accepted September 4, the leave of absence was revoked, and Mr. Bender was reappointed as financial clerk, to take effect as of the 16th of August.

The Auditor declined to state an account for the *per diem* compensation, but stated one allowing travelling expenses and hotel expenses, in accordance with the general order of the Secretary of the Interior of July 1, 1874, which allows:

“Hotel expenses, not exceeding \$5 per day, when the detention is incident to or necessary for the performance of the duties for which the travel is ordered.” (See also Rev. Stats., 2077.)

The Second Comptroller decided that the full amount claimed as special agent was due, and he certified a balance accordingly to the Secretary of the Interior, who has drawn his requisition in favor of Mr. Bender for the amount, viz., \$63.60, payable out of appropriation for “purchase of Indian supplies.” (Act May 11, 1880.) The requisition has been countersigned by the Second Comptroller; and, in usual course of business, it would have been “registered” in the Auditor’s office and referred to the Secretary of the Treasury for his warrant. But the Acting Second Auditor has sent the requisition unregistered, with a letter dated October 2, 1880, to the Secretary of the Treasury, expressing a doubt whether a warrant to pay the account would be “warranted by law,” and “whether the Secretary of the Interior had any authority to appoint Mr. Bender a special agent” (Rev. Stats., 2067), and stating that if not, “then the claim of Mr. Bender is barred by section 1765, Revised Statutes.”

On October 4, 1880, the Secretary of the Treasury referred the papers “to the First Comptroller for an expression of his views on the points raised by the Second Auditor.”

The First Comptroller prepared an opinion, which is printed in this volume, pages 317 *et sequor*, in which he held that the Secretary of the Interior had authority to appoint Mr. Bender as special agent, and to authorize the payment of his travelling expenses and hotel-bills; that the resignation of Mr. Bender as clerk could not have any retroactive effect; that no compensation for services as such special agent could lawfully be paid to him; that when the Second Comptroller has regularly certified a balance due to a claimant, the Secretary of the Treasury, notwithstanding section 191 of the Revised Statutes, has authority, under sections 248 and 3675 of the Revised Statutes, before issuing a warrant in payment thereof, to decide whether such warrant would be “in pursuance of appropriations by law;” that the First Comptroller has authority, by virtue of sections 269 and 3675, to decide whether, when granted, it is “warranted by law;” that section 191 of the Revised Statutes does not impair the authority given to the First Comptroller by section 269 to determine whether warrants granted by the Secretary are “warranted by law;” but that no final action could be taken on the papers presented, because they were not in the regular course of business before the First Comptroller.

The opinion concluded as follows:

“The papers will be returned to the Honorable Secretary of the Treasury, who will be advised to return them to the Second Auditor, so that the requisition of the Secretary of the Interior may be registered by the Auditor, as the law requires. And the Secretary of the Treasury will be further advised, that when the requisition so registered

gaged in discharging the duties of one office, an officer will necessarily be prevented from performing the duties of a second office; but, according to the authorities on the question, this conflict does not constitute incompatibility of offices. If such conflict would not render offices incompatible, how can a similar conflict render the "position" of special agent incompatible with the office of clerk? The fact that Congress has, by positive law, rendered any two of certain specified offices incompatible, opens the way for a strong implication that no two of any other offices, in the absence of a like provision by the legislature, are incompatible. *Expressio unius est exclusio alterius*. The special agency to which Mr. Bender was appointed being of a temporary character, and less in dignity than an office, there is the greater reason for holding that no incompatibility exists between it and his permanent office of financial clerk.

Certainly executive officers should not, except on grounds which render it clear, if not unavoidable, declare, as to positions temporarily held by reason of greater experience and value of services by officers in the Departments, the existence of incompatibility.

4. It is suggested that Mr. Bender, while clerk, "was appointed to the more lucrative position of special agent." A position as special agent, which could only continue for a short period, might, during its continuance, be more lucrative than a clerkship, but it would rarely be profitable to accept a temporary agency by surrendering an office having every reasonable prospect of permanency. When an officer, having a small salary, accepts a second office with a larger one, he does not, for that reason, vacate his first office. The amount of salary is not a test of incompatibility as between offices. Why, then, should it be so between an office and a special agency which is less in dignity than an office? Inasmuch as no one of the National courts, and, so far as can be learned, no executive officer, has heretofore declared the existence of incompatibility in such case as this, the opinion in which it is urged cannot be accepted as correct.

5. The cases in which questions as to incompatibility have arisen have generally been on the construction of statutes declaring that one person shall not hold more than one of specified offices. (Com. *ex rel* Bache *vs.* Binns, 17 Serg. & Rawle, 219; Rev. Stats., 183, 1224, 2053, 2062; 14 Op., 573; 15 Op., 306, 405; 16 Op., 499.)

By the ancient common law the acceptance of one office was the vacation of another. This rule is fully exemplified in cases of clerical preferment in England time out of mind.

"If a bishop in England be made a cardinal, the bishoprick, the ecclesiastical office, becomes void, and the King shall name the successor, because the bishoprick is of his patronage." (Coke's Inst., part 4, p. 357; Rot. Parl., 18 H. 6, part 2, m. 24.)

The words *et officiis in feodo*, in Stat. Westm. 2, chap. 25, are held to include offices in tail or for life, and to apply to ecclesiastical as well as other offices. (Coke's Inst., part 2, p. 411-12.) The principle that *Nemo duobus utatur officiis*, referred to by Lord Coke (Inst., part 4, p. 100), was, he says, observed by the justices of the King's Bench and Common Pleas, "for none of them can take any other office or any fee or reward but of the King only; and it were behavefull to the commonwealth and advancement of justice and right, and preferment of well-deserving men, if the like course were holden concerning all offices, as well ecclesiastical as temporal and civil; and that no man, following the example of the reverend judges, should enjoy two offices; for several offices were never instituted to be used by one man." Such was the rule of the ancient common law; though the practice would seem to have departed widely from it, and to have led to a material modification of the doctrine itself. The rule is now only partially preserved in the principle of incompatibility.

6. That two offices may be incompatible, either at common law, from their nature, or by statutory provisions, is obvious, (see Comyn's Dig., B. 5, tit. "Officer;" Cruise, Dig., tit. 25; 16 Vin. Abr., 101;) but no comprehensive definition of incompatibility is laid down.

In a *moral* sense, in determining the point as to what offices are incompatible with each other, we should not only consider the duties of the offices, but also the ability of the incumbent to perform them in an efficient manner. If there be not such harmony between the duties of the two offices, that they may be well and truly discharged by one person, the offices are not in a moral sense compatible.

"A 'fit' person to execute an office is he,—'*qui melius et sciat et possit, officium illud intendere.*' 'This word *idoneus*,' says Lord Coke, 'is oftentimes in law attributed to those who have any office or function; and he is said in law to be *idoneus*, apt and fit to execute his office, who has three things,—honesty, knowledge, and ability; honesty to execute it truly, without malice, affection, or partiality; knowledge to know what he ought duly to do; and ability, as well in estate as in body, that he may intend [attend to, take care of] and execute his office, when need is, diligently, and not for impotency or poverty neglect it.'—(Potter's Dwarries on Statutes, 288.)

To be *minus idoneus ad officium exequendum* is a good cause for a motion or removal from the office. (*Id.*) But this is not the legal sense of incompatibility.

There are many decisions illustrative of the incompatibility of two offices, and therefrom it might be laid down that two offices, of which one is subject to the control of the incumbent of the other, or to his jurisdiction or appointment, are incompatible. (4 Inst., 310; 1 Sid., 305; Doug., 398; Rex. *vs.* Patteson, Nev. & M., 1, 612; State *vs.* Buttz., 9 S. Car., 156.)

In the case of *The Commonwealth vs. The Sheriff and Keeper of the Jail of Northumberland County*, in which the Supreme Court of Pennsylvania held that there was no inherent incompatibility, either at common law or by statute, between the offices of justice of the peace and associate judge of the court of common pleas, it is said:

"At the common law, offices subordinate and interfering with each other have been considered incompatible, as where one officer is judicial and the other ministerial, and the ministerial officer is directly subordinate to the judicial. Hence it is that the Chief Justice of the King's Bench cannot be a prothonotary or clerk of the peace, 4 *Inst.*, 100; nor a forester be a justice in eyre in the same forest, because the forester is under the correction of the justice in eyre, and he cannot judge himself, 3 *Inst.*, 310; but a justice of the Common Pleas may be baron of the exchequer, 4 *Com. Dig. Office*, B. 7; and the Chief Justice of the King's Bench being made keeper of the great seal, continues Chief Justice, *Cro. Car.*, 600, *Sid.*, 338. Sir Edward Littleton, Chief Justice of the Common Pleas, being appointed lord keeper, continued to act as Chief Justice. Lord Hardwicke for sometime acted both as Chief Justice and Chancellor, and yet the Chancellor sends issues to be tried in the King's Bench or Common Pleas; and cases are sent by the Chancellor to these Courts for their opinion; and in cases of great importance he calls to his assistance members both of the King's Bench and the Common Pleas. So, antecedent to the present constitution [of Pennsylvania] justices of the peace were justices of the Court of Quarter Sessions, from whose decisions appeals lay to that Court, as appeals on orders of removal. So they were generally appointed Judges of the Common Pleas, and yet—as justices—they had civil jurisdiction from the exercise of which appeals lay to the Common Pleas. Under the constitution of 1776, justices of the peace were elected by the freeholders of the district, and commissioned by the executive council; but the appointment of judges of the Common Pleas was by the council alone. A judge of the Common Pleas was not necessarily to be taken from the justices elected by the freeholders; yet generally they were. One instance occurs to the recollection of the Court, though there may be many others, where this was not the case; the late Chief Justice of this Court was appointed President of the Common Pleas of the city and county of *Philadelphia*, and he never had been elected a justice of the peace. These justices of the peace were members of a Court who decided on appeals from justices of the peace. Here was the same incompatibility, if incompatibility it be, as in this case." (4 *Serg. & R.*, 275–8.)

Upon the principles above stated, the position of special agent was not incompatible with the office of financial clerk.

II. The First Comptroller has authority to revoke the countersigning of a warrant upon which no payment has been made, and to reopen the settlement on which the warrant was granted, upon the discovery of matter affecting the validity of such settlement. (Montgomery's case, 5 Ct. Cls., 98; Winter's case, 3 Ct. Cls., 136; Smith's case, 2 Ct. Cls., 208; 15 Op., 198.)

Until payment has been made on the warrant it is not *functus officio*, and so is revocable, because still within the power of the Department. (2 Bouv. Inst., n., 1382; 5 Pick. Mass., 85; U. S. *ex rel.* McBride *vs.* Schurz, 102 U. S., 378.)

There are questions of book-keeping involved in this transaction, and the only remaining inquiry is to dispose of these.

A convenient and proper mode of paying to Mr. Bender the amount due him will be to request him to present to the First Comptroller a statement, duly verified, to be filed as a voucher in the Second Auditor's Office, showing the amount of *hotel-bills*, if any, he paid during the time he acted as special agent, in addition to the amount of his *travelling expenses* (\$21.60), already sufficiently ascertained. The Treasurer will then be authorized to deliver to Mr. Bender the draft already issued to him, on condition that he deposit, as a repayment to the appropriation on which it has been drawn, the difference between the gross amount of the travelling expenses so ascertained and the hotel-bills, and the amount of the draft. The money thus deposited in the Treasury can be formally covered into the Treasury on a requisition for a covering warrant from the Secretary of the Interior. The Secretary of the Treasury will be notified of the opinion herein given, and requested to transmit a copy of the same to the Secretary of the Interior, in order that Mr. Bender may be requested to take the necessary steps to secure payment of the sums due to him.*

It would seem clear, also, that the disbursing clerk of the Interior Department can properly pay the salary due as financial clerk for the time Mr. Bender acted as special agent; but that is not a question now presented for consideration.

TREASURY DEPARTMENT,
First Comptroller's Office.

* The following note will present the reasons for this mode of procedure:

The usual course, when a draft which should not be paid has been issued, is as follows: The Treasurer collects the amount, and deposits it as a repayment to the appropriation upon which it was drawn, (which, in this case, was for telegraphing, and purchase of Indian supplies.) And when the draft is for payment of a balance certified by the Second Comptroller, a certificate of the deposit is sent to the head of the Department having supervision of the appropriation, for a requisition for a warrant to cover the amount to the credit of the appropriation. The requisition is made necessary by the method of transacting business in the Treasury Department.

The form of such requisition is shown by the following copy of one:

"Deposit Requisition.

"No. 1617.

INTERIOR DEPARTMENT.

"To the SECRETARY OF THE TREASURY.

"SIR: Please issue your warrant on the person named below in favor of the Treasurer of the United States for twenty-three dollars, being amount deposited to the credit of the said Treasurer, per list No. 80-3229, herewith, on account of the undermentioned appropriation.

"Given under my hand, this 15th day of October, 1880.

"\$23.

C. SCHURZ,

"Secretary of the Interior.

"Countersigned, October 16, 1880:

"W. W. UPTON,

"Second Comptroller.

"Registered, 23d:

"H. C. HARMON,

"Acting Second Auditor.

"CICERO NEWELL, *Indian Agent.*

"Bond April 9, 1879.

"Support of Sioux Indians of different tribes, &c., 1880, \$23."

Requisitions for covering warrants are not necessary in relation to any branch of the civil service proper, but accounts for the Indian service are adjusted by the Second Auditor and Second Comptroller in the same manner as accounts relating to the Army.

In the civil service, so far as respects accounts audited by the First and Fifth Auditors, the Commissioner of Customs, and the Commissioner of the General Land Office, the Register of the Treasury is the principal book-keeper of the Government, and on his books no charge is made against an appropriation, nor any credit entered, until he receives *warrants* signed and countersigned according to law. When money is deposited to the credit of an appropriation which is under the control of the Attorney-General, or of the Secretary of State, or of the Secretary of the Interior (except on account of the Indian service or pensions), no requisition is made for a covering warrant; the warrant is issued upon receipt of the certificate of deposit at the Treasury Department, and is entered upon the books of the Register to the credit of the proper appropriation, and, if need be, to the credit of the depositor. (Rev. Stats., 3675.)

But the Auditors charged with the examination of the accounts of the War and Navy Departments keep all accounts of the receipts and expenditures of the public money in regard to those Departments, and one of them, the Second Auditor, keeps the accounts relating to the Indian service. Said officers do not wait for "*warrants*" from the Secretary of the Treasury, but make all needful debit or credit entries on their books from the requisitions of the respective heads of Departments as they are received to be registered. (Rev. Stats., 3673.) Requisitions for covering warrants are not prescribed by statute, but are made necessary by the system of keeping Army and Navy accounts, and accounts for pensions and Indian affairs. The Auditors act on the presumption that *warrants* will necessarily result from the requisitions, and that the latter will not be changed or modified. When warrants are issued, countersigned, and registered, they are kept by the Treasurer, to be rendered as vouchers with his general account. In the ordinary course of business they are never seen by the Auditors. The First and Fifth Auditors and the Commissioner of the General Land Office get certificates from the Register of the Treasury, showing what warrants have been issued on accounts in which they are concerned. But the Second, Third, and Fourth Auditors do not require such certificates; they accept the requisitions as sufficient proof that money has been received into the Treasury or that money will be paid out. (Rev. Stats., 3673.)

In the present condition of the case of Mr. Bender, which is under consideration, if the Treasurer collect the draft and repay the amount, and his certificate of deposit be sent to the Secretary of the Interior for his requisition, and the Secretary decline to draw such requisition for a covering warrant, the result will be that the books of the Interior Department and of the Treasury Department will continue to make it appear that Mr. Bender has been paid, although such is not the fact. And the Treasurer will not be allowed credit for the repayment, because a covering warrant has not been issued. In view of all this, and of the fact that Mr. Bender is really entitled to the greater part of the amount of the draft, the order to the Treasurer to deposit has been suspended.

If, instead of said order, the Treasurer were directed to cancel or destroy the draft (a step which he would regard as almost impossible), he would, under instructions from the First Comptroller, have to erase or cancel the entries on his books and return the warrant to the Register of the Treasury, who, under like instructions, would erase or cancel the entries of the warrant on *his* books and send the warrant to the First Comptroller, who, after cancelling the entries on *his* books, would return the warrant to the Secretary of the Treasury, to be cancelled on *his* books.

All these proceedings would be necessary to get the case back to the point where it stood when the Acting Comptroller's name was subscribed to the warrant.

If, after the return of the warrant to the Secretary, he should concur in the views of the First Comptroller, he could return the requisition upon which the warrant was issued to the Second Auditor, with instructions to correct the entries on his books, and to refer the requisition to the Second Comptroller, who, under like instructions, could cancel the entries on his books, and return the requisition to the Secretary of the Interior. Thus all the work of the Treasury officers could be undone, though in a way for which there is probably no precedent, and it would leave Mr. Bender as far from getting a settlement as if the Treasurer had collected the draft and deposited the money.

It has been decided that Mr. Bender is entitled to his pay as financial clerk, and to the allowance of expenses for the four days he was absent on special service. To settle the matter, Mr. Bender may now be requested to make affidavit showing, to the best of his knowledge, the amount of the expenses incurred, said affidavit to be sent to the First Comptroller, and, after examination by him, to be filed as a voucher with Mr. Bender's account in the Second Auditor's Office. As the *expenses* are payable out of the appropriation on which the draft above mentioned was drawn, the Treasurer will be authorized to deliver the draft to Mr. Bender, provided that the latter deposit, as a repayment to the appropriation, the difference between his expenses and the amount of the draft. Mr. Bender can then be paid by the disbursing clerk, upon the approval of the head of the Department of the Interior, his salary for the four days in question. This plan will necessitate the cancellation of the revocation on the warrant, and of the indorsement on the draft relative to a deposit by the Treasurer.

APPENDIX.

ORGANIZATION AND DUTIES

OF

THE ACCOUNTING OFFICES

IN THE

DEPARTMENT OF THE TREASURY,

AND OF THE

ACCOUNTING DIVISION IN THE GENERAL LAND OFFICE.

APPENDIX.

CHAPTER I.

THE OFFICE OF THE FIRST COMPTROLLER IN THE DEPARTMENT OF THE TREASURY.

The work of this office has, pursuant to law, been divided by the Comptroller into fourteen branches, which, for convenient arrangement in conformity to the work of the other accounting offices, are herein styled *divisions*. Four Divisions have been created by statute. To these have been assigned, respectively, the duties pertaining to the following branches, viz:

1. Diplomatic and consular.
2. Expenses of United States courts.
3. Expenses of collecting internal revenue, and accounts for collection of such revenue.
4. Appropriations and warrants.

Each of the branches not under the supervision of a Chief of Division is under the direction of a clerk in charge; and in five of them such clerk is the only one employed.

The services rendered in each division will appear by the statements following:*

FIRST COMPTROLLER'S OFFICE.

Division of Foreign Intercourse.

The following is a statement in detail of the different classes of accounts, audited by the Fifth Auditor, which are settled in this Division; of the requisitions issued and received; and of the correspondence and other business transacted:

ACCOUNTS.

I.—Salaries of Diplomatic Officers:

Including ambassadors, envoys extraordinary and ministers plenipotentiary, ministers resident, commissioners, chargés d'affaires, agents, and secretaries of legation. (The present number of diplomatic officers is 46.) (Revised Statutes, secs. 1674 to 1688.)

* For an elaborate statement of the mode of transacting business in the Department of the Treasury see the cases of *McKee vs. The United States*, 12 Ct. Cls., 553; *McKnight et al. vs. The United States*, 13 Ct. Cls., 292; s. c., 98 U. S., 179.

II.—Contingent Expenses of United States Legations:

Including rent, postage, stationery, and such other incidental expenditures as may be approved by the Secretary of State. (Rev. Stats., 1748, 1752.)

III.—Salaries of Interpreters to United States Legations:

In China, Japan, and Turkey. (Rev. Stats., 1678, 1679, 1680.)

IV.—Salaries and Compensation of Consular Officers:

(The present number of consular officers is 878, and of consular clerks 13.)

1. Salaries of consuls-general, vice-consuls general, consuls, vice-consuls, commercial agents, and vice-commercial agents, who receive fixed salaries under annual appropriations. (Rev. Stats., 1690, 1703, 1740, 1741, 1742, 1743, 1744.)
2. Compensation of consuls, vice-consuls, commercial agents, and vice-commercial agents, derived from fees. (Rev. Stats., 1730, 1732.)
3. Compensation of consular agents, derived from fees. (Rev. Stats., 1733.)
4. Salaries of United States consular clerks. (Rev. Stats., secs. 1704, 1705; also sec. 5, act June 11, 1874; 18 Stats., p. 70.)
5. Salaries of interpreters to consulates (Rev. Stats., 1692, 1693; also act June 11, 1874, secs. 3, 4, 5, and 6; 18 Stats., p. 70) in China, Japan, Siam, and Turkish dominions.
6. Salaries of marshals to consular courts (Rev. Stats., 4111, 4112, 4113) in China, Japan, Siam, and Turkey.

V.—Incidental Expenses of Consulates:

1. Contingent expenses, including office-rent, postage, stationery, and such other incidental expenses as may be approved by the Secretary of State. (Rev. Stats., 1706, 1748, 1752.)
2. Allowance for clerk-hire. (Sec. 2, act of June 11, 1874; 18 Stats., p. 70.) Since the passage of the original act, here referred to, authorizing the allowance of clerk-hire at certain consulates, some changes have been made from year to year in the annual appropriation bills.
3. Rent of prisons for American convicts, wages of keepers, &c., in China, Japan, Siam, and Turkey. (Rev. Stats., 4121.)
4. Expenses of shipping and discharging seamen at Liverpool, London, Cardiff, Belfast, and Hamburgh. (Act June 4, 1878; 20 Stats., 97.)
5. Loss by exchange on consular service (annually appropriated for since 1856).

VI.—Accounts relating to American Seamen:

1. For relief and protection of American seamen in foreign countries. (Rev. Stats., 4577 to 4584.)
2. For passage of destitute American seamen to the United States. (Rev. Stats., 4578, 4579.)
3. For rescuing from shipwreck seamen or citizens of the United States. (11 Stats., p. 28. Annually appropriated for.)
4. For expenses of arrest, imprisonment, and bringing home from foreign countries of seamen and other persons charged with crimes. (Annually appropriated for.)
5. For marine-hospital dues collected by United States consular officers. (Rev. Stats., 4585, 4586.)

VII.—*Accounts of Disbursing Officers:*

1. United States Bankers at London: For salaries of United States ministers; contingent expenses of foreign missions; salaries of secretaries of legation; salaries of consular service; contingent expenses of consular service; surplus fees deposited by consular officers; relief and protection of American seamen; expenses of interpreters, guards, &c., in the Turkish dominions; allowance to widows and heirs of diplomatic officers who die abroad; expenses of Cape Spartel light; Berlin Fishery Exhibition; International Bureau of Weights and Measures; Scheldt dues; International Bi-metallic Commission; Tribunal of Arbitration at Geneva; International Exposition at Vienna; International Exposition at Paris; international exhibitions at Sydney and Melbourne. (The United States bankers at London are appointed by the Secretary of State to disburse funds placed in their hands under his direction and that of the Secretary of the Treasury.)
2. Disbursing Clerk of State Department: All accounts of this officer for disbursements, including those made by him in relation to foreign intercourse. (Rev. Stats., 176, 3622, 3643, 3648.)

VIII.—*Accounts arising under Treaties and Conventions:*

This class embraces such accounts as are from time to time adjusted at the Treasury under the various acts of Congress made to carry into effect treaties and conventions between the United States and foreign Governments—such as salaries and expenses of the Tribunal of Arbitration at Geneva; of the Joint High Commission at Washington; of the Court of Commissioners of Alabama Claims, and the awards settled under its judgments; and of the Mixed Commission on British and American Claims. Under this head quarterly accounts are now adjusted, as follow:

1. For salaries and contingent expenses of the United States and Spanish Commission. (Treaty concluded at Madrid, February 12, 1871; Revised Statutes relating to the District of Columbia and Post-Roads; Public Treaties, p. 720; 16 Stats., 495; and annual appropriations since made.)
2. For the establishment and maintenance of the International Bureau of Weights and Measures. (Convention signed by the representative of the United States, May 20, 1875, and ratified May 15, 1878; 20 Stats., 709; act of June 20, 1878; 20 Stats., 217.)
3. For salaries and expenses of the joint commission between the United States and the French Republic. (Convention of January 15, 1880, and act of June 16, 1880; 21 Stats., 296.)

IX.—*Accounts of Agents and Commissioners of the United States to International Expositions and Exhibitions:*

1. For compensation and expenses of the late Commissioner-General to the Paris Exposition. (Joint resolution December 15, 1877; 20 Stats. 245-6; and act June 20, 1878; 20 Stats., 218.)
2. For compensation and expenses of commissioner to international exhibitions at Sydney and Melbourne. (Joint resolution June 10, 1879; 21 Stats., 49.)

X.—*Allowance to Widows and Heirs of Diplomatic and Consular Officers who die abroad.*
(Rev. Stats., 1749.)

XI.—*Estates of Decedents:*

For moneys and proceeds of effects of citizens of the United States, and also of American seamen, dying abroad, received and accounted for at the Treasury by United States consular officers. (Rev. Stats., 1709, 1710, 1711, 4539, 4540, 4541.)

XII.—*International Bi-metallic Commission:*

For compensation and expenses of commissioners to said commission. (Act February 28, 1878; 20 Stats., 25.)

XIII.—*International Prison Congress:*

For expenses of commissioner to said congress. (Act December 15, 1877; 20 Stats., 12.)

REQUISITIONS.

These embrace:

1. Requisitions of the First Comptroller on the Secretary of the Treasury, in payment of drafts drawn by United States consular officers for salary, prison expenses, salaries of interpreters, salaries of marshals to consular courts, and drafts of such officers of mixed commissions as are authorized to draw on the Secretary of the Treasury.

2. Requisitions of the Secretary of State on the Secretary of the Treasury (which are received, entered, and referred to the Warrant Division), in payment of drafts of United States diplomatic officers for salary and contingent expenses; drafts of United States consular officers for contingent expenses, clerk-hire, relief of seamen, rescuing shipwrecked seamen, sending home criminals; and for advances to the United States bankers at London, to the disbursing clerk of the Department of State, and to such other officers as are authorized to disburse public moneys under the direction and approval of the Secretary of State.

CORRESPONDENCE.

The correspondence of this Division relates to the adjustment of the different accounts aforementioned, advising the respective officers of the balances and differences arising on such adjustments, and of questions incidental thereto; and to such other matters of a miscellaneous nature as appertain to this branch of business.

Letters received, relating to foreign intercourse, are referred to this Division, and bound and indexed.

BONDS.

All bonds of consular officers of the United States are received, registered, and filed in this Division. (Rev. Stats., 1697, 1698.)

RECORDS.

The following records are kept in this Division, and properly indexed: Record of Diplomatic and Consular Accounts; Consular Statistics; Requisitions of the First Comptroller; Requisitions of the Secretary of State; Register of Drafts drawn on United States Bankers at London by Diplomatic Officers; Register of Consular Bonds; Record of Contingent Expenses allowed at United States Legations; Record of Balances due Estates of Decedents.

FIRST COMPTROLLER'S OFFICE.

Division of Judiciary Accounts.

In this Division the following accounts, when examined and stated by the First Auditor, are re-examined and finally adjusted:

I.—Accounts of United States Marshals:

1. For serving process, and attending upon the courts of the United States, in the States, Territories, and District of Columbia. (Rev. Stats., 680, 829, 830, 832, 837, 856; Rev. Stats. rel. to Dist. of Columbia, 897.)
2. For official emoluments of marshals. (Rev. Stats., 833, 834, 837, 841–845.)
3. For fees of jurors. (Rev. Stats., 852, 855; 21 Stats., 290.)
4. For fees of witnesses. (Rev. Stats., 848, 850, 855, 878; 21 Stats., 290; Rev. Stats. for Dist. of Columbia, 880.)
5. For support of prisoners in jails. (Rev. Stats., 830.)
6. For miscellaneous expenses of the courts, comprising bailiffs, criers, stationery, fuel, lights, furniture, watchmen, janitors, &c. (Rev. Stats., 830; 21 Stats., 43; Rev. Stats. rel. to Dist. of Columbia, 902.)
7. For fees of supervisors of elections. (Rev. Stats., 2031.)

II.—Accounts of United States Attorneys for fees. (Rev. Stats., 824–827, 836–838, 4646.)**III.—Accounts of United States Attorneys for official emoluments.** (Rev. Stats., 833–835, 843–845; Rev. Stats. rel. to Dist. of Columbia, 907–909.)**IV.—Accounts of Assistants to United States Attorneys for salaries.** (Rev. Stats., 363.)**V.—Accounts of Clerks of United States Courts for fees.** (Rev. Stats., 828, 840.)**VI.—Accounts of said Clerks for official emoluments.** (Rev. Stats., 833, 839, 840, 842–845.)**VII.—Accounts of Commissioners of Circuit Courts for fees.** (Rev. Stats., 847, 1986.)**VIII.—Accounts of Chief Supervisors of Elections for fees and expenses.** (Rev. Stats., 2031.)**IX.—Accounts for Rent of Court-Rooms.** (Rev. Stats., 830; 21 Stats., 43.)**X.—Accounts of Penitentiaries for maintenance of convicts.** (Rev. Stats., 5546; 21 Stats., 43.)**XI.—Accounts for Payment of Judgments rendered by the Court of Claims.** (Rev. Stats., 1089, 1093.)**XII.—Requisitions of Marshals for advances of money to defray expenses of courts are examined, and reports thereon are made to the Attorney-General.****XIII.—Certified Copies of Marshals' Official Bonds are examined, registered, and filed.****XIV.—Correspondence relating to the requisitions and bonds, and to the adjustment of the accounts, is conducted by this Division.**

General supervisory powers over accounts of the officers of courts is vested in the Attorney-General, who signs all requisitions for advances, and for payments of balances, "subject to the same control as is exercised on like estimates or accounts by the First Auditor or First Comptroller." (Rev. Stats., 368, 369.)

Before the accounts of said officers are rendered to the First Auditor, they must be submitted for approval to the district or circuit courts of the respective districts. (18 Stats., 333.)

FIRST COMPTROLLER'S OFFICE.*Division of Internal-Revenue Accounts.*

This Division is charged with the revision of and final adjustment of the following classes of accounts stated and reported by the Fifth Auditor:

I.—Accounts of Collectors of Internal Revenue:

1. Collection or revenue accounts. (Rev. Stats., 3143, 3146, 3148, 3149, 3150, 3181, 3183, 3209, 3210, 3212, 3216, 3218, 3219, 3220, 3221, 3222, 3264, and 3314.)
2. Expense or compensation accounts—old. (Rev. Stats., 3145, 3146, 3147, 3314; secs. 25 and 26, act June 30, 1864.)
3. Disbursing accounts, disbursing agents. (Rev. Stats., 3144, 3145, 3146, 3147, 3148, 3149, 3150, 3314, 3620, and 5488.)
4. Expenses of seizure and sale of property sold for violation of internal-revenue laws. (Rev. Stats., 3458, 3460.)
5. Disbursements under the appropriation for punishment for violations of internal-revenue laws. (Rev. Stats., 3144, 3463, as amended by act of March 1, 1879; 20 Stats., 327.)

II.—Accounts of Ex-Assessors of Internal Revenue—old. (Sec. 22, act June 30, 1864; sec. 9, act July 13, 1866; sec. 9, act March 2, 1867; Rev. Stats., 378.)**III.—Direct-tax Accounts with the States.** (Rev. Stats., 8, 46, 53, &c.; act August 5, 1861.)**IV.—Direct-tax Commissioners' Accounts.** (Secs. 5, 6, &c., of act June 7, 1862, and amendments.)**V.—Accounts of Internal-Revenue Stamp Agents.** (Rev. Stats., 3425, 3427.)**VI.—Expense Accounts of Revenue Agents.** (Rev. Stats., 3152.)**VII.—Accounts of the Secretary of the Treasury** for fines, penalties, and forfeitures. (Rev. Stats., 3460, 3461.)**VIII.—Accounts of the Treasury Department** for stationery furnished to internal-revenue officers. (Rev. Stats., 3145.)**IX.—Monthly Accounts of the Commissioner of Internal Revenue:**

1. For distilled-spirit stamps. (Rev. Stats., 321, 3312.)
2. For beer-stamps. (Rev. Stats., 321, 3341.)
3. For tobacco, snuff, and cigar stamps. (Rev. Stats., 321, 3369.)
4. For stamped-foil wrappers for tobacco. (Rev. Stats., 321, 3369.)
5. For stamped-paper labels for tobacco. (Rev. Stats., 321, 3369.)
6. For special-tax stamps. (Rev. Stats., 321, 3238.)
7. For documentary and proprietary stamps. (Rev. Stats., 321, 3425.)

X.—Accounts of Disbursing Clerk of the Treasury Department:

1. For payment of internal-revenue agents and gangers. (Rev. Stats., 3152, 3157.)
2. For disbursements under appropriations for stamps, paper, and dies. (Rev. Stats., 321.)
3. For disbursements under appropriations for punishment for violation of internal-revenue laws. (Rev. Stats., 3463.)

4. For disbursements of the annual appropriations for salaries in the office of the Commissioner of Internal Revenue. (See the annual appropriation acts.)
- XI.—*Accounts of Collectors and Revenue Agents* for expenses incurred by them in the detection and suppression of violations of internal-revenue laws. (Rev. Stats., 3463.)
- XII.—*Accounts of Distillery Surveyors.* (Rev. Stats., 3264.)
- XIII.—*Accounts of Indebted Railroads* for transportation of internal-revenue agents. (Rev. Stats., 3152, 5260; section 2, act of May 8, 1878.)
- XIV.—*Accounts for Transportation of Stationery* furnished to officers of internal revenue. (Rev. Stats., 3145.)
- XV.—*Accounts for Rewards for Information* which led to the collection of taxes illegally withheld and to the seizure of illicit stills. (Rev. Stats., 3463.)
- XVI.—*Accounts for Paper for Internal-Revenue Stamps* and for printing said stamps. (Rev. Stats., 321, and annual appropriation for stamps, paper, and dies.)
- XVII.—*Accounts for Drawbacks under Internal-Revenue Laws.* (Rev. Stats., 3329, 3386, 3441.)
- XVIII.—*Accounts for Redemption of Stamps.* (Rev. Stats., 3426.)
- XIX.—*Accounts for Refunding Taxes Illegally Collected.* (Rev. Stats., 3220.)
- XX.—*Accounts for Refunding Taxes on Spirits* destroyed by casualty. (Rev. Stats., 3221.)
- XXI.—*Accounts for Repayment of Money for Lands* sold under direct-tax laws, when the purchaser has been evicted. (Rev. Stats., 3689; act June 8, 1872.)
- XXII.—*Accounts for Purchasing Hydrometers and Stamps and Dies, &c.* (Rev. Stats., 321.)
- XXIII.—*Accounts for the Purchase of Locks and Seals* for distilleries. (Rev. Stats., 3267.)
- XXIV.—*Special Allowances of the Secretary of the Treasury to Collectors of Internal Revenue* are assigned to this Division for examination, record, and reference. (Rev. Stats., 3145.)
- XXV.—*Advances to Collectors of Internal Revenue* as disbursing agents on their monthly requisitions are made through this Division. (Rev. Stats., 3648.)
- XXVI.—*The Care and Custody of the following Bonds* are committed to this Division, namely: The official bonds of internal-revenue collectors, (Rev. Stats., 3143,) and their bonds as disbursing agents, (Rev. Stats., 3144); also, the bonds of stamp agents. (Rev. Stats., 3425, 3427.)
- XXVII.—*The Cases Transmitted to the Solicitor of the Treasury for the Institution of Suits* upon the revenue and the disbursing bonds of internal-revenue collectors, and upon the bonds of stamp agents, are prepared in this Division. (Rev. Stats., 269, 3217, 3624, 3625, 3633.)
- XXVIII.—*The Collectors' Tax-List Receipts* (Form 23½) are assigned to this Division for acknowledgment, record, and reference; also, a variety of other miscellaneous work, including correspondence relating to the duties of the office, extending to every section of the country.
- XXIX.—*Accounts of South Carolina Free-School Commissioners* for the disbursement of the trust-fund interest for the support of free schools in South Carolina. (Act March 3, 1873.)

XXX.—*Accounts of the Secretary of the Treasury* for deposits to his credit in offer of compromise, as per following circular:

Regulations governing the receipt and disposition of moneys offered under Section 3469, Revised Statutes of the United States, in compromise of claims in favor of the United States.

1879.
DEPARTMENT NO. 166. }
Secretary's Office.

TREASURY DEPARTMENT,
Washington, D. C., November 28, 1879.

Hereafter no offer of compromise of any claim in favor of the United States, in which a specific sum of money is offered, under section 3469, Revised Statutes of the United States, will be considered until such sum shall have been deposited in some Independent-Treasury office, or a National Bank Depositary, to the credit of the Secretary of the Treasury, and the certificates therefor received at the Department.

If the offer be rejected, the money will be returned to the proponent; if accepted, it will be turned into the Treasury, after deducting any fees or percentages due to the United States attorney or others.

To enable a proponent at a distance from any such office or bank to perfect his offer, the Secretary will receive, for this purpose, a bank draft for the amount of the offer, payable to his order, at any of the principal cities of the United States, the draft to be collected by him and the proceeds placed to his credit, however, before any action is taken upon the offer.

In issuing certificates for this purpose, Independent-Treasury officers and depositary banks will use the usual form for certificates issued in triplicate, making such changes in the wording as may be necessary—the original to be sent by the depositor to the Secretary of the Treasury, the duplicate to the Solicitor of the Treasury, and the triplicate retained by the depositor as his voucher. Transcripts of this account, to be known as “Special Deposit Account, No. 5,” will be rendered at the close of each month to the Secretary and the Solicitor of the Treasury.

Any amounts now held by United States attorneys or others, on offers of compromise under said section, will be deposited at once to the credit of the Secretary in like manner, and the certificates transmitted as above directed.

Independent-Treasury offices are located in Washington, D. C.; Boston, Mass.; New York City, N. Y.; Philadelphia, Pa.; St. Louis, Mo.; New Orleans, La.; Cincinnati, Ohio; Chicago, Ill.; San Francisco, Cal.; Baltimore, Md.; and Tucson, Arizona; and depositary banks in most of the large cities throughout the country.

JOHN SHERMAN,
Secretary of the Treasury.

XXXI.—*Properly indexed records* are kept in this Division of all of these accounts; and, when adjusted, copies of the reports on the principal ones are regularly forwarded to the parties interested therein. The accounts, with the certified reports thereon, are committed to the custody of the Register of the Treasury. (Rev. Stats., 313.)

FIRST COMPTROLLER'S OFFICE.

Division of Appropriations and Warrants.

This Division is charged with the examination and registry of all warrants issued by the Secretary of the Treasury. The examination is made for the purpose of seeing that all warrants are issued in conformity to the laws governing the appropriation of money for the public service, and the payment of the same out of the Treasury. After being examined and registered, the warrants are countersigned by the First Comptroller, and the amounts thereof are posted in the respective ledgers of the office.

No money can be drawn from or covered into the Treasury without a warrant, signed by the Secretary, and countersigned by the First Comptroller. (Rev. Stats., 248, 269, 3673, 3675, 3679.)

The warrants are—

1. *Appropriation Warrants.*—These set apart from the general fund in the Treasury the several amounts authorized by law to be used for the public service. On the ledgers such amounts are placed to the credit of the respective objects for which the warrants have been issued. (Rev. Stats., 248.)
2. *Repay and Covering Warrants.*—These are issued to cover into the Treasury the revenues of the Government from all sources; and all amounts that have been paid out of the Treasury, which are returned as unexpended balances by the disbursing officers of the Government. (Rev. Stats., 3617, 3618, 3621, 3622, 3623, 3624, 3633, 3692.)
3. *Pay Warrants.*—These are of two classes—
 - (a.) Accountable warrants, by which funds are issued to disbursing officers for the payment of current expenses, and for which they are held accountable on their official bonds. (Rev. Stats., 3620, 3639.)
 - (b.) Settlement warrants, which are issued for the payment of balances that have been allowed and certified by the accounting officers of the Government.
4. *Surplus-Fund Warrants.*—At the end of each fiscal year, there is issued for each branch of the public service a "Surplus-Fund Warrant," which carries to the general fund in the Treasury all balances remaining on the books two years. (18 Stats., 110.)

The following is a list of the warrants :

- I.—*War Appropriation Warrants.*
- II.—*Navy Appropriation Warrants.*
- III.—*Interior Proper Appropriation Warrants.*—These latter place to the credit of the several appropriations all sums authorized by law for the payment of pensions; for the support of Indian tribes; all amounts arising from sales of lands belonging to Indian tribes; the interest upon their bonds, and interest upon funds in Treasury in lieu of investment. (Rev. Stats., 2093, 2094, 2095, 2096; act April 1, 1880; 21 Stats., 70.)
- IV.—*Interior Civil Appropriation Warrants.*

- V.—*Treasury Appropriation Warrants*, (including public debt, quarterly salaries, judiciary, and diplomatic appropriations.)
- VI.—*Customs Appropriation Warrants*.
- VII.—*Internal-Revenue Appropriation Warrants*.
- VIII.—*Surplus-Fund Warrants*.
- IX.—*War Pay Warrants*, for placing advances to the credit of disbursing officers of the military department, and for the settlement of individual claims, in pursuance of requisitions from the Secretary of War. (Rev. Stats., 3673.)
- X.—*War Repay Warrants*, which cover into the Treasury all unexpended balances in the hands of disbursing officers under the Secretary of War. (Rev. Stats., 3621, 3622, 3623, 3624, 3633, 3692.)
- XI.—*Navy Pay Warrants*.—These are for advances to disbursing officers of the Navy and the Marine Corps, and for the payment of individual claims, in pursuance of requisitions from the Secretary of the Navy. (Rev. Stats., 3673, 3676.)
- XII.—*Navy Repay Warrants*.—These are for covering into the Treasury, and placing to the credit of the several appropriations, the unexpended balances in the hands of disbursing officers under the Secretary of the Navy. (Rev. Stats., 3622, 3692.)
- XIII.—*Interior Proper Pay Warrants*.—These are for the payment of pensions; the expenses of carrying out treaties with Indians; and all miscellaneous expenses of the Indian Bureau. (Rev. Stats., 466.)
- XIV.—*Interior Repay Warrants*.—These cover into the Treasury, and place to the credit of the several appropriations, unexpended balances in the hands of disbursing officers under the Secretary of the Interior.
- XV.—*Interior Civil Pay Warrants*.—These are for the payment of all salaries and expenses of the Interior Department and its several bureaus.
- XVI.—*Customs Pay Warrants*.—For the payment of expenses of collecting the revenue from customs; expenses of custom-houses, light-houses, and light-ships, marine-hospital service, &c. (Rev. Stats., 3687, 3689.)
- XVII.—*Internal-Revenue Pay Warrants*.—For the expenses of collecting the revenue under the Commissioner of Internal Revenue. (Rev. Stats., 3689.)
- XVIII.—*Diplomatic Pay Warrants*.—For the expenses of the diplomatic and consular service.
- XIX.—*Public Debt Pay Warrants*.
- XX.—*Quarterly Salaries, Pay Warrants*.—For the payment of salaries of all active and retired judges of the United States courts, of United States marshals, and of district attorneys.
- XXI.—*Judiciary Pay Warrants*.—For the payment of fees of marshals, clerks, jurors, and witnesses of United States courts; miscellaneous expenses; and support of prisoners of United States courts; and all other expenses under the supervision of the Attorney-General.
- XXII.—*Treasury Pay Warrants*.—For the payment of all salaries and expenses of the legislative, executive, and judicial departments of the Government.
- XXIII.—*Miscellaneous Repay Warrants*.—These cover into the Treasury all repayments to the credit of appropriations for Interior, Civil, Customs, Internal Revenue, Diplomatic, Public Debt, Quarterly Salaries, Judiciary, and Treasury.

XXIV.—*Customs Covering Warrants.*

XXV.—*Internal Revenue Covering Warrants.*

XXVI.—*Lands Covering Warrants.*

XXVII.—*Miscellaneous Revenue Covering Warrants*, which cover into the Treasury the receipts of the Government from all sources (except postal revenues) not included in the Customs, Internal Revenue, and Lands Covering Warrants. (Rev. Stats., 3615, 3616, 3618.)

Warrants are divided into three classes, namely :

I.—Appropriation.

II.—Pay.

III.—Covering.



I.—APPROPRIATION, subdivided into—

- (1.) *Regular*, for current and ordinary expenditures.
- (2.) *Transfer*, for change of appropriations, based on legislation.
- (3.) *Indefinite*, for conveying to the credit of an appropriation an amount sufficient to balance it. (Rev. Stats., 3689.)
- (4.) *Surplus*, for carrying balances to the surplus fund. (Act June 20, 1874; 18 Stats., 110, sec. 5.)
- (5.) *Relief*, for relief in specific cases.

II.—PAY, subdivided into—

- (1.) *Accountable*, for advances to disbursing officers.
- (2.) *Settlement*, to pay indebtedness of the Government.
- (3.) *Transfer*, for adjustment of appropriations. (Act March 3, 1875, sec. 5; 18 Stats., 418.)
- (4.) *Counter*, for carrying transfers to proper credits. (Act March 3, 1875, sec. 5; 18 Stats., 418.)

III.—COVERING, subdivided into—

- (1.) *Repay*, for covering unexpended balances to the credit of an appropriation.
- (2.) *Revenue*, for covering the revenues of the Government.

HISTORY OF AN APPROPRIATION WARRANT.

I. Congress having made the necessary appropriations, the Secretary of the Treasury issues warrants, in duplicate, to place the money to the credit of the respective appropriations. The following is a copy of a war appropriation warrant:

APPROPRIATION WARRANT, To the

No. 300,

WAR DEPARTMENT.

COMPTROLLERS AND REGISTER OF THE TREASURY:

Congress having, by the hereinafter-mentioned act, made the appropriations thereunder specified, amounting to two hundred and seventy-five thousand dollars:

The REGISTER is directed to cause the sum to be carried to the debit of the general account of appropriations, and the COMPTROLLERS and REGISTER are directed to

credit each appropriation with the sum so appropriated, and for so doing this shall be your WARRANT.

[SEAL.] Given, in duplicate, under my hand and the seal of the Treasury Department, this first day of July, in the year of our Lord one thousand eight hundred and seventy-nine, and of Independence the one hundred and third.

JOHN B. HAWLEY,
Acting Secretary of the Treasury.
July 25, 1879.

Received and registered July 27, 1879.
WM. P. TITCOMB,
Acting Register.

Received, registered, and countersigned
July 26, 1879.
J. TARBELL,
Acting First Comptroller.

By "an act making appropriations for fortifications and other works of defense, and for the armament thereof, for the fiscal year ending June 30, eighteen hundred and eighty, and for other purposes."
Approved March 3, 1879.

Preservation and repair of fortifications, 1880	\$100, 000
Torpedoes for harbor defenses, 1880	50, 000
Armament of fortifications, 1880	125, 000
	<hr/>
	275, 000
	<hr/>

II.—The warrant being granted by the Secretary of the Treasury, it is next sent to the First Comptroller to be registered and countersigned.

III.—The First Comptroller having registered and countersigned the warrant, it is next forwarded to the Register of the Treasury, who registers and files it. The duplicate is transmitted to the Departments and Auditors interested in the appropriations, and the correctness of whose books and accounts requires that they should know the amounts and titles of appropriations thus officially rendered subject to their requisition and action. In the case of this warrant, the duplicate is referred—

- (1.) To the Second Comptroller.
- (2.) To the Third Auditor.
- (3.) To the office of the Chief of Engineers and the Chief of Ordnance.
- (4.) Returned to the Second Comptroller for file.

HISTORY OF AN ACCOUNTABLE WARRANT.

Case of a Quartermaster asking for Funds for Defraying Expenses of his Military Department.

I.—The officer's estimate being received and approved by the Quartermaster-General, the latter transmits a request to the Secretary of War, as follows:

(ACCOUNTS Z.)

\$100, 000.

WAR DEPARTMENT.

No. 796.

OFFICE OF THE QUARTERMASTER-GENERAL,
Washington City, January 20, 1881.

To the SECRETARY OF WAR.

SIR: Please cause the sum of one hundred thousand dollars to be placed in the following-named depositories, viz:

Ass't Treasurer U. S., San Francisco, Cal..... \$100, 000

Total..... 100, 000
to the credit of Lieut.-Col. Rufus Saxton, Deputy Q. M. General U. S. A., presidio of San Francisco, Cal., who is to be held accountable therefor, and charged to the appropriations for—

Regular supplies, Quartermaster's Dept., for fiscal year ending June 30, 1881.	\$10, 000
Incidental expenses, Quartermaster's Dept., " " " 1881.	10, 000
Barracks and quarters, " " " 1881.	5, 000
Transportation of the Army and its supplies, " " " 1881.	50, 000
Horses for cavalry and artillery, " " " 1881.	10, 000
Clothing, camp and garrison equipage, " " " 1881.	15, 000
Construction and repairs of hospitals, " " " 1881.	.....
National cemeteries, " " " 1881.	.....
Pay of supts. of national cemeteries, " " " 1881.	.....

Total..... 100, 000

Respectfully,

M. C. MEIGS,
Quartermaster-General,
Brevet Major-General, U. S. Army.

Officer's bond dated August 13, 1880.

II.—The Secretary of War issues thereupon a requisition on the Secretary of the Treasury, as follows:

ACCOUNTABLE
REQUISITION
No. 1881.
WAR DEPARTMENT.

To the SECRETARY OF THE TREASURY.

SIR: Please cause a warrant for one hundred thousand dollars and — cents to be issued in favor of Ass't Treas. U. S., San Francisco, Cal., to be placed to the credit of Lt.-Col. Rufus Saxton, Dep'ty Q. M. Gen. U. S. A., presidio of San Francisco, Cal., for which sum he is to be held accountable. To be charged to the under-mentioned appropriations.
Given under my hand, this 22d day of Jan., 1881.

\$100,000.
Countersigned: ALEX. RAMSEY,
Secretary of War.
W. W. UPTON,
Second Comptroller.
Registered: E. W. KEIGHTLEY,
3d Auditor.

Appropriations:

Regular supplies of the Quartermaster's Department, 1881.....	\$10, 000
Incidental expenses of the Quartermaster's Department, 1881.....	10, 000
Horses for cavalry and artillery, 1881.....	10, 000
Barracks and quarters, 1881.....	5, 000
Transportation of the Army and its supplies, 1881.....	50, 000
National cemeteries	
Construction and repairs of hospitals	
Clothing, camp and garrison equipage, 1881	15, 000
Subsistence of the Army	
	<u>100, 000</u>

III.—The requisition, though addressed to the Secretary of the Treasury, is first sent to the Second Comptroller, in whose office the personal accounts of all quartermasters are passed upon, for his countersignature.

IV.—It is next transmitted to the Third Auditor for registry.

V.—After such registry, it is sent to the Secretary of the Treasury.

VI.—The Secretary of the Treasury then draws a warrant for the amount on the Treasurer of the United States, as follows:

OFFICE OF THE SECRETARY OF THE TREASURY,
Division of Warrants, Estimates, and Appropriations. }
Form 56.

WAR

TREASURY DEPARTMENT.

[Vignette.]

ACCOUNTABLE
WARRANT.

No. 800.

\$100,000

To the TREASURER OF THE UNITED STATES, greeting:

Pay to Ass't Treas. U. S., San Francisco, Cal., to be placed to the credit of Lt.-Col. Rufus Saxton, Dep'ty Q. M. Gen. U. S. A., presidio of San Francisco, Cal., or order, to be charged to the appropriations named in the margin, one hundred thousand dollars. For which sum he, Rufus Saxton, is to be held accountable, pursuant to a requisition, No. 1881, of the Secretary of War, dated Jan. 22, 1881, countersigned by the Second Comptroller of the Treasury and registered by the Third Auditor. And for so doing this shall be your WARRANT.

APPROPRIATIONS.

1881. Regular supplies	Quartermaster's	
Dept.....		\$10,000
Inc. exp., Q. M. D.....		10,000
Barracks and quarters.....		5,000
Army transportation.....		50,000
Horses for cavalry and artillery....		10,000
Clothing, camp and garrison equip- age.....		15,000
		<u>100,000</u>

Given under my hand and the seal of the Treasury Department this 1st [SEAL.] day of February, in the year of our Lord one thousand eight hundred and eighty-one, and of Independence the one hundred and fifth.

JOHN SHERMAN,
Secretary.

Countersigned:

WM. LAWRENCE,
First Comptroller.

Registered:

G. W. SCOFIELD.
Register.

OFFICE OF THE TREASURER OF THE UNITED STATES.

Received for this warrant the following draft —:

No. — on ————
No. — on ————
Mailed ————

VII.—After receiving the signature of the Secretary of the Treasury, the warrant, with requisition attached, is transmitted to the First Comptroller's Office, for examination, entry, and the counter-signature of the First Comptroller, if he find it to be "warranted by law."

VIII.—It is next sent to the Register's Office for registry.

IX.—It is then sent to the Treasurer's Office, where the draft is issued.

HISTORY OF A SETTLEMENT PAY WARRANT.

Case of a Contractor to Furnish Supplies for the Indians.

I.—The contract to furnish supplies is on file in the Indian Office.

II.—Receipted vouchers are sent to the Indian Office by the contractor; copies of which follow:

United States Indian Service.—Weigher's Return.

SAN CARLOS AGENCY, Arizona, December 10, 1880.

Return of one hundred and nine head of beef-cattle, received from William A.

Parshall, and weighed by Henry H. Wilcox and George Smerdon, for United States Indian agent J. C. Tiffany:

5.....	3,980	3.....	2,130	5.....	3,760	4.....	2,960
4.....	2,840	4.....	2,930	4.....	2,770	4.....	2,990
4.....	2,890	3.....	2,100	3.....	2,030	2.....	1,460
5.....	3,630	4.....	2,990	4.....	3,190		
5.....	3,750	4.....	3,150	4.....	2,970	10.....	7,410
4.....	3,110	6.....	4,440	3.....	2,380		
4.....	2,760	4.....	2,820	5.....	3,990		
4.....	3,140	5.....	3,830	3.....	2,300		
35.....	26,100	33.....	24,390	31.....	23,330		

Recapitulation.

35.....	26,100
33.....	24,390
31.....	23,330
10.....	7,410

109..... 81,230 lbs. gross.

The tare was arrived at by weighing average weight, 745 $\frac{3}{4}$ pounds.

We certify, on honor, that the above is a true return of weights as weighed by us.
HENRY H. WILCOX.
GEORGE SMERDON.

I certify, on honor, that the above-named articles have been properly weighed by the parties who have signed their names hereto, and that the weights, as above given, are correct.

J. C. TIFFANY,
U. S. Indian Agent.

This return to be transmitted to the Commissioner of Indian Affairs by the agent per first mail. No letter of transmittal required.

United States Indian Service.—Certificate of Inspection.

SAN CARLOS AGENCY, Arizona, December 10, 1880.

I hereby certify that I have carefully inspected, for the Indian department, one hundred and nine (109) head of beef-steers, weighing eighty-one thousand two hundred and thirty (81,230) pounds gross, and found the same to be good, healthy, merchantable beef-cattle, and of quality fully equal to requirements of Mr. William A. Parshall's contract, dated June 15, 1880; and I also certify that I have signed this receipt in duplicate.

A. G. NASSIN,
First Lieut. 12th Infantry, Inspector of Supplies.

This certificate to be transmitted to the Commissioner of Indian Affairs by the inspector, per first mail, unless inspection is made at the agency, when it will be given to the Indian agent for transmittal with his receipt. No letter of transmittal required.

(This form must be exclusively used for beef received "under contract.")

United States Indian Service.—Receipt for Beef and Beef-Cattle delivered under Contract.

(1) SAN CARLOS, A. TER., December, 1880.

Received at San Carlos Indian Agency, (2) Arizona, (3) December 10, 1880, of William A. Parshall, (4) one hundred and nine (109) (5) head of beef-cattle, weighing (4) eighty-one thousand two hundred and thirty (6) (81,230 lbs.) pounds gross, (weight ascertained by (7) weighing on agency cattle-scales on the hoof,) under his contract dated June 15, 1880, for subsistence of Indians at the said agency, and for which I have signed receipts in duplicate.

I hereby certify that the beef here receipted for is fully equal to the requirements of the contract above mentioned, and in this delivery and receipt each and every condition, provision, and stipulation of the contract has been fully and honestly complied with, and that payment has not been made for the same.

(8) J. C. TIFFANY,
U. S. Indian Agent.

This receipt to be mailed, by the officer issuing the same, to the Commissioner of Indian Affairs, by the first mail.
No letter of transmittal required.

NOTES AND INSTRUCTIONS.

- 1. Address and date. Name of month should be stated, as June, October, &c.
- 2. State or Territory.
- 3. Date of receipt of beef.
- 4. Numbers, weights, prices, and quantities must be stated in words.
- 5. If delivered on the block "net," strike out "head" and "cattle."
- 6. Write "net" or "gross," as the contract calls for.
- 7. State specifically how weight is ascertained. If gross weight is estimated by weighing dressed beef, state what percentage was allowed for "tare."
- 8. Persons signing for "agent" or "acting agent" must show written authority for so doing.
- 9. Erasures, alterations, or interlineations must be noticed as having been made before signing, and explanation signed by agent.
- 10. Persons receiving this receipt are enjoined to see that it is properly filled up and signed.
- 11. Assignments should be specifically made the same as drafts are transferred, or by general written assignment, filed in each office revising the accounts.
- 12. Payment of this receipt will be made only at the office of Indian Affairs.
- 13. Payment will be refused on any other form.

III.—These vouchers are jacketed by the Indian Office, approved by the Commissioner of Indian Affairs, and referred to the Board of Indian Commissioners.

IV.—When so approved, they are returned to the Indian Office, where an account thereon is stated, as follows :

(5-344 b.)

THE UNITED STATES	To WILLIAM A. PARSHALL,	Dr.
1880.		
Dec. 10. For 109 head beef-cattle, weighing 81,230 lbs., gross, furnished for and delivered at San Carlos Agency, Arizona, under contract dated June 15, 1880, as per annexed vouchers, viz : 81,230 lbs. gross, at \$2.77 per 100 lbs.....		\$2,250 07
		<u>2,250 07</u>

Claims 13,629.
Account stated in Indian Office.
E. A. BALLOCH, *Examiner.*

V.—From the Indian Office this account and the vouchers are referred to the Second Auditor for examination and settlement, as follows:

(FORM 58.)

No. 2,701.	
Appropriation :	
Support of Apaches of Arizona and New Mexico, 1881.....	\$2,250 07

TREASURY DEPARTMENT,
Second Auditor's Office, January 14, 1881.

I certify that there is due from the United States to Wm. A. Parshall the sum of two thousand two hundred and fifty dollars and seven cents, (\$2,250.07,) being the amount of claim for 109 steers, 81,230 lbs. gross, delivered at San Carlos Indian Agency, Dec. 10, 1880, under contract of June 15, 1880.
To be paid to claimant, care Clum & Dingman, Washington, D. C.
As appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.
O. FERRISS, *Auditor.*
To the SECOND COMPTROLLER OF THE TREASURY.

VI.—This settlement by the Second Auditor is, together with the vouchers, reported to the Second Comptroller for examination, and the certification of the balance due, as follows :

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above, this 17th day of January, 1881.
W. W. UPTON,
Second Comptroller.

VII.—The Second Comptroller sends the account so certified to the Commissioner of Indian Affairs, and transmits the vouchers to the Second Auditor.

VIII.—On receipt of the account the Commissioner of Indian Affairs makes a requisition on the Secretary of the Interior, for the payment of the balance found due.

The following is a copy of the requisition:

(5—263.)

No. ———.

DEPARTMENT OF THE INTERIOR.

\$2,250.07. No. 1984.

OFFICE OF INDIAN AFFAIRS, January 18th, 1881.

To the SECRETARY OF THE INTERIOR.

SIR: Please cause the sum of two thousand two hundred and fifty and $\frac{7}{10}$ dollars to be remitted to Wm. A. Parshall, care Clum and Dingman, Washington, D. C., being the amount of claim for 109 steers, 81,230 lbs. gross, delivered at San Carlos Agency Dec'r 10th, 1880, under contract of June 15th, 1880, as per certificate of the Second Comptroller, No. 2701, herewith, and charge as follows, viz:

To the appropriation for—	
Support of Apaches of Arizona and New Mexico, 1881	\$2,250 07
	<hr/>
	2,250 07
	<hr/>

Respectfully,

E. M. MARBLE,
Acting Commissioner.

IX.—The Secretary of the Interior then makes a requisition on the Secretary of the Treasury, as follows:

(1—304.)

DEPARTMENT OF THE INTERIOR.

No. 2366.

To the SECRETARY OF THE TREASURY.

SIR: Please cause a warrant, payable out of the under-mentioned appropriations, for the sum of two thousand two hundred and fifty dollars and seven cents, to be issued in favor of Wm. A. Parshall, care of Clum & Dingman, present, being the amount due him on settlement, as per certificate of the Second Comptroller, No. 2701.

Given under my hand this 19th day of January, 1881.

<u>\$2,250.07</u>	C. SCHURZ, Secretary of the Interior.
-------------------	--

Countersigned:	Registered:
W. W. UPTON, Second Comptroller.	O. FERRISS, 2d Auditor.

Appropriations:

Support of Apaches of Arizona and New Mexico, 1881	\$2,250 07
Total	<hr/> 2,250 07 <hr/>

Registered:
_____.

X.—A warrant is then issued by the Secretary of the Treasury for payment, as follows:

OFFICE OF THE SECRETARY OF THE TREASURY,
Division of Warrants, Estimates, and Appropriations. }
Form 71.

INTERIOR—INDIANS AND PENSIONS.

[Vignette.]

SETTLEMENT WARRANT.

No. 254.

\$2,250 07	
APPROPRIATIONS.	
Civilization fund.....	
Interest on avails of Osage diminished reserve lands in Kansas.....	
Fulf. treaties with Sisseton, Wahpeton, and Santee Sioux of Lake Traverse and Devil's Lake.....	
Contingencies, Indian Department.	
Telegraphing and purchase of Indian supplies.....	
Transportation of Indian supplies.....	
1881.—Support of Apaches of Arizona and New Mexico....	\$2,250 07
Support of Arapahoes, Cheyennes, Apaches, Kiowas, Comanches, and Wichitas.....	
Support of Arickarees, Gros Ventres, and Mandans.....	
Support of Assinaboines in Montana.....	
Support of Chippewas of Lake Superior.....	
Support of Chippewas of Red Lake and Pembina.....	
Support of Confederated band of Utes.....	
Support of Flatheads and other confederated tribes.....	
Support of Gros Ventres in Montana.....	
Support of Indians of Central Superintendency.....	
Support of Indians at Fort Peck Agency.....	
Support of Indians on the Malheur reservation.....	
Support of Mixed Shoshones, Bannocks, and Sheepeaters.....	
Support of Nez Perces of Joseph's band.....	
Support of Northern Cheyennes and Arapahoes.....	
Support of schools not otherwise provided for.....	
Support of Shoshones and Bannocks.....	
Support of Sioux of different tribes, including Santee Sioux of Nebraska.....	
Support of Sioux, Yankton tribe.....	
Support of Tabeguache, Muache, Capote, Weeminuche, Yampa, Grand River, and Uintah bands of Utes.....	
Support of Wichitas and other affiliated bands.....	

TREASURY DEPARTMENT.

To the TREASURER OF THE UNITED STATES,
greeting:

Pay to Wm. A. Parshall, care Clum & Dingman, present, or order, to be charged to the appropriations named in the margin, two thousand two hundred and fifty dollars and seven cents, due ——— on settlement, pursuant to requisition No. 2366, of the Secretary of the Interior, dated January 19, 1881, countersigned by the Second Comptroller of the Treasury and registered by the Second Auditor. And for so doing this shall be your WARRANT.

Given under my hand and the seal of the Treasury Department, this 20th day of January, in the year of our Lord one thousand eight hundred and eighty-one, and of Independence the one hundred and fifth.

J. K. UPTON,
Assistant Secretary.

Countersigned:

WM. LAWRENCE,
First Comptroller.

Registered:

W. P. TITCOMB,
Assistant Register.

OFFICE OF THE
TREASURER OF THE UNITED STATES.

Received for this warrant the following draft:
No. 12598 on New York.
No. — on Clum & Dingman.
Mailed Clum & Dingman, January 22, 1881.

HISTORY OF A REPAY COVERING WARRANT.

I.—A certificate of deposit is sent by the depositor to the Secretary of the Treasury, as follows :

[FORM 1—NATIONAL BANKS.]

(ORIGINAL.—The depositor will forward this by the first mail to the Secretary of the Treasury.)

THE ATLANTA NATIONAL BANK,
ATLANTA, GA., Ap. 30, 1880.

No. 4538.

I certify that C. W. Williams, Capt. and A. Q. M., U. S. A., has this day deposited to the credit of the Treasurer of the United States one hundred and nine and $\frac{9}{100}$ dollars, on account of appropriation of 1879-'80, sale of fuel and forage to officers, for which I have signed triplicate receipts.

\$109 09

E. 153.

P. ROMARE,
Cashier.

II.—This certificate of deposit is sent by the Secretary of the Treasury to the Third Auditor, who refers it to the Secretary of War, in whose Department the appropriation to which the repayment should be made is noted by indorsement on the certificate; whereupon the latter is returned to the Third Auditor, in whose office it is placed on file. A list of such deposits is then made by the Third Auditor and referred for verification to the Treasurer of the United States, by whom, when verified, it is sent to the Secretary of the Treasury in the following form :

List No. 7887.

Covered by requisition No. 5199.

NATIONAL BANKS.

Deposits to the credit of the Treasurer of the United States in the undernamed Depositories during the second quarter of 1880, on account of appropriations under the direction of the War Department.

Deposit.		For whose credit.	Appropriation.	A'mt of each appropriation.	Total am't of each deposit.
Date.	Place.				
1880.					
April 3	Omaha Nat'l Bank, Neb.	Gilliss, James, Capt.	Regular supplies, 1880 .. Clothing, &c., 1880	\$22 85 2 35	
April 30	.....do.....	Furey, J. V., Capt	Regular supplies, 1880 ..		\$25 20
April 17	.....do.....	Parkhurst, C. D., Lt.....	Clothing, &c., 1880		148 31
April 30	Atlanta N. B., Ga...	Williams, C. W., Capt ..	.....do		51 92
April 30	.....do.....	.....do.....	Regular supplies, 1880 ..		7 03
					109 09
					341 55

War, 743—2, '80.

Third Auditor's Office, June 3, 1880, }
Book-keeper's Div.

4011.

Correct: W. F. MacLENNAN,
Chf. Warrant Dir.

V. D., June 8, '80.
H. C. S.

This list is then returned to the Third Auditor, who fills out a form of requisition for the issue of a repay covering warrant and sends it to the Secretary of War.

III.—The requisition for a warrant is then made, on the form thus sent to him, by the Secretary of War, and then countersigned by the Second Comptroller, and registered by the Third Auditor:

No. 5199.

WAR DEPARTMENT.
(743.)

{ Seal of Warrant Div., }
{ Treas'y Dept. }

To the SECRETARY OF THE TREASURY.

SIR: Please issue a warrant on Capt. James Gilliss and 3 others, in favor of the Treasurer of the United States for three hundred and forty-one dollars and fifty-five cents, being amount deposited to the credit of the United States, as per list of deposits No. 7883, herewith, to go to the credit of the undermentioned appropriations.

Given under my hand, this 12th day of June, 1880.

\$341. 55

S. B. P.

Countersigned, June 17, 1880:

R. S. J.

Registered, June 19, 1880:

J.

AL'X. RAMSEY,
Secretary of War.

W. W. UPTON,
Second Comptroller.

E. W. KEIGHTLEY,
Third Auditor.

Appropriations:	
Regular supplies, 1880.....	\$280 25
Clothing, &c., 1880.....	61 30
	<hr/> 341 55
Capt. James Gillis, reg. sup., 1880.....	\$22 85
Clothing, 1880.....	2 35
	<hr/> \$25 20
Capt. J. V. Furey, reg. sup., 1880.....	148 31
Lt. C. D. Parkhurst, clothing, &c., 1880	51 92
Capt. C. W. Williams, clothing, &c., 1880.....	7 03
Reg. sup., "	109 09
	<hr/> 116 12
	<hr/> 341 55

Seal of Division of Requisitions }
and Accounts, War Dept. }

IV.—The warrant is issued on this requisition by the Secretary of the Treasury, countersigned by the First Comptroller, and registered by the Register, as follows:

OFFICE OF THE SECRETARY OF THE TREASURY,
Division of Warrants, Estimates, and Appropriations. }
Form 61.

WAR

[Vignette.]

REPAY COVERING WARRANT.

No. 743.

\$341. 55

APPROPRIATIONS.

Pay and travelling and general ex-
penses of the Army.....

Pay of the Army.....

Mileage.....

General expenses.....

Ordnance, ordnance stores, and
supplies.....

TREASURY DEPARTMENT.

To JAMES GILLISS AND 3 OTHERS:

Pay to the TREASURER OF THE UNITED STATES,
to be credited to the appropriations named in the
margin of this warrant, three hundred and forty-
one dollars and fifty-five cents, amount of deposits
to credit of the Treasurer, as per List No. 7883
herewith, pursuant to a requisition, No. 5199, of
the Secretary of War, dated June 12th, 1880,
countersigned by the Second Comptroller of the
Treasury, and registered by the 3d Auditor. And
for so doing this shall be your WARRANT.
Given under my hand and the seal of the Treas-
ury Department, this 30th day of June, in the

Ordinance service.....	year of our Lord one thousand eight hundred and	
Repairs of arsenals.....	eighty, and of Independence the one hundred and	
Arming and equipping the militia.....	fourth.	
Expenses of recruiting.....		J. K. UPTON,
Medical and Hospital Department.....		Assistant Secretary.
1880.—Regular supplies of the	W. F. McL.	
Quartermaster's Department... \$280 25	S. W. S.	
Incidental expenses of the Quar-	Countersigned, July 10:	J. TARBELL,
termaster's Department.....		Act'g First Comptroller.
Barracks and quarters.....		
Horses for cavalry and artillery.....	M. G. P.	
Transportation of the Army and	Registered:	W. P. TITCOMB,
its supplies.....	12	Ass't Register.
Subsistence of the Army.....		
1880.—Clothing, camp, and garri-		
son equipage..... 61 30		
B		
R 341 55		
TREAS'R'S OFFICE, July 12, 1880.	OFFICE OF THE TREASURER	
Division of Accounts:	OF THE UNITED STATES.	
T. J. H.	Received, July 13, 1880.	A. U. WYMAN,
V. D.		Assistant Treasurer.

FIRST COMPTROLLER'S OFFICE.

Division of Loans.

This Division is employed in the examination of accounts of the United States Treasurer for the redemption of securities of the United States and of the District of Columbia, and accounts of the Treasurer and Assistant Treasurers for payment of interest on the public debt. Accounts of this class are examined and stated by the First Auditor (Rev. Stats., 277) and transmitted to the First Comptroller's Office, where they are re-examined and adjusted and the balances certified; after which they, with the vouchers accompanying them, are transmitted to the Register of the Treasury for record and file.

The rules governing the action of the accounting officers are, in general, found in the acts of Congress authorizing the issue of the securities, stating the time when they mature, and, if interest-bearing, the rate of interest.

The interest on the public debt is paid from a permanent appropriation authorized by the act of February 9, 1847, (Rev. Stats., 3689,) and separate accounts are kept of coupon and registered interest.

Accounts for coupon interest are rendered and adjusted monthly, (Rev. Stats., 3622,) the coupons paid by the United States Treasurer and the Assistant Treasurers forming a separate account. The accounts are arranged, classified, and scheduled, as follow :

- (1.) With reference to the loans to which they belong.
- (2.) By denominations.
- (3.) By date of maturity.

Interest on all registered bonds issued previous to the refunding-act of July 14, 1870, is paid by the Treasurer and Assistant Treasurers semi-annually on dividend-schedules prepared and transmitted by the

Register of the Treasury. The schedules are kept open by those officers for seven months after the interest matures, thus affording ample time to the holders of registered stock to collect the interest standing to their credit. At the end of that period the receipted schedules are transmitted to the First Auditor, who, after examination and statement of account, transmits them to the First Comptroller's Office for revision.

Interest on registered bonds issued under the provisions of the acts of July 14, 1870, and January 20, 1871, viz., the funded loan of 1881, the funded loan of 1891, and consols of 1907, is paid quarterly by checks drawn by the Treasurer and sent by mail to the holders of the bonds.

These checks, when paid, are transmitted by the Treasurer, as vouchers in settlement of his account, to the First Auditor, who, after examination, states an account for each loan; each account comprising all the checks of that loan paid by the Treasurer and assistant during a period of three months. The number of these interest-checks issued by the Treasurer is over 300,000 per annum; and, being made payable to order, the indorsements have to be carefully scrutinized, and the names of the payees, and the amounts, verified by a comparison with the schedule furnished by the Register.

The accounts pertaining to United States loans, which are examined by this Division, are as follow:

- I.—United States bonds called for refunding. (16 Stats., 273; 20 Stats., 265.)
- II.—United States bonds called for the sinking-fund. (Rev. Stats., 3686, 3688, 3694.)
- III.—United States bonds purchased for the sinking-fund. (Rev. Stats., 3686, 3688, 3694.)
- IV.—Gold certificates. (Rev. Stats., 254.)
- V.—Silver certificates. (20 Stats., 26.)
- VI.—Refunding certificates. (20 Stats., 321.)
- VII.—Certificates of deposit issued to national banks. (Rev. Stats., 5193.)
- VIII.—Fractional currency carried to account of the sinking-fund. (19 Stats., 33.)
- IX.—Old demand notes. (Rev. Stats., 3009, 3589.)
- X.—Legal-tender notes. (Rev. Stats., 3579, 3580, 3581.)
- XI.—Registered stock of the District of Columbia. (21 Stats., 9.)
- XII.—Accounts with Pacific Railroad Companies for bonds issued, and interest on same paid by the United States. (12 Stats., 492, 493; 13 Stats., 358; Rev. Stats., 5260.)
- XIII.—Interest-bearing Treasury notes overdue and outstanding, of various issues, viz:
 - 1. One-year notes of 1863 (5 per cent.); act March 3, 1863.
 - 2. Two-year notes of 1863 (5 per cent.); act March 3, 1863.
 - 3. Seven-thirties of 1861 ($7\frac{2}{3}$ per cent.); act July 17, 1861.

4. Seven-thirties of 1864 and 1865 ($7\frac{3}{8}$ per cent.); acts June 30, 1864, and March 3, 1865.

5. Compound-interest notes (6 per cent.); act March 3, 1863.

XIV.—Sinking-fund, Union and Central Pacific Railroad Companies. (20 Stats. 58.)

XV.—Coupons of United States bonds, Treasury notes, and bonds of the District of Columbia. (Rev. Stats., 3698.)

XVI.—Purchase and management of the Louisville and Portland Canal. By the act of May 11, 1874, a permanent appropriation is made for the interest on the bonds issued by the Louisville and Portland Canal Company, and also for the principal, when due. (18 Stats., 43.)

XVII.—Quarterly checks for interest on the funded loans of 1881, 1891, and consols of 1907.

XVIII.—Interest on six per cent. registered bonds, known as "Sixes of 1881," issued under acts of July 17 and August 5, 1861, and March 3, 1863. These bonds will be due June 30, 1881.

XIX.—Interest on the Navy-pension fund. This fund amounts to \$14,000,000, invested in registered securities of the United States, bearing interest at three per cent. per annum, payable to the Secretary of the Navy, trustee. (Rev. Stats., 4750, 4755.)

XX.—Sinking-fund for three-sixty-five bonds of the District of Columbia. (20 Stats., 410.)

Outstanding Liabilities.

This class of accounts arises from the application for payment of Treasury drafts and checks of disbursing officers outstanding for three years or more; the funds against which they were drawn having been deposited and covered into the Treasury, to the credit of the appropriation for outstanding liabilities, and to the personal credit of the payees of said drafts and checks, pursuant to the act of May 2, 1866. (Rev. Stats., 306, 308.)

Accounts for Salaries of Officers and Employés, and for Contingent Expenses of the Senate and House of Representatives.

The laws applicable to these are found in the various appropriation acts, (chiefly in the legislative, executive, and judicial.)

Moneys appropriated for the expenses of the Senate are disbursed by the Secretary of the Senate. (Rev. Stats., 52, 56, 57, 58, 59.)

Moneys appropriated for the expenses of the House of Representatives are disbursed by the Clerk of the House. (Rev. Stats., 53, 58, 59.) These accounts are examined and audited by the First Auditor, and by him reported to the First Comptroller.

The accounts of the Secretary of the Senate are under the following heads of appropriation (21 Stats., 210):

I.—Salaries, officers and employés.

II.—One month's compensation to certain employés of the Senate. (Resolution 55, June 16, 1880.)

- III.—One month's pay to discharged employés.
- IV.—Clerks to committees, and pages.
- V.—Stationery and newspapers.
- VI.—Horses and wagons.
- VII.—Fuel for heating apparatus.
- VIII.—Furniture and repairs.
- IX.—Pay of folders.
- X.—Materials for folding.
- XI.—Packing boxes.
- XII.—Miscellaneous items.
- XIII.—Salaries, Capitol police.
- XIV.—Capitol police, contingent fund.
- XV.—Reporting proceedings and debates.
- XVI.—Expenses of preparing Congressional Directory. (Rev. Stats., 77.)
- XVII.—Postage.

The accounts of the Clerk of the House of Representatives are under the following heads of appropriation (21 Stats., 210):

- I.—Salaries, officers and employés.
- II.—One month's compensation to certain employés of the House of Representatives. (Resolution 55, June 16, 1880.)
- III.—Clerks to committees.
- IV.—Pages.
- V.—Pay of folders.
- VI.—Materials for folding.
- VII.—Stationery and newspapers.
- VIII.—Fuel for heating apparatus.
- IX.—Furniture and repairs.
- X.—Horses and wagons.
- XI.—Packing-boxes.
- XII.—Cartage.
- XIII.—Miscellaneous items.
- XIV.—Salaries, Capitol police.
- XV.—Capitol police, contingent fund.
- XVI.—Postage.
- XVII.—Cleaning Statuary Hall.
- XVIII.—Summary reports of the Commissioners of Claims. (21 Stats., 280.)

FIRST COMPTROLLER'S OFFICE.

Division of United States Treasurer's, Assistant Treasurers', and Public Printer's Accounts.

The accounts which are adjusted in this Division are reported by the First Auditor, and consist of—

- I.—*General Account of the Treasurer of the United States for Receipts and Expenditures:*
This account contains all warrants which have been issued by the Secretary of the Treasury for the receipt or payment of public moneys. It is ren-

dered quarterly by the Treasurer to the First Auditor, and by him audited and transmitted to the First Comptroller for his decision thereon. The titles of the warrants contained in the accounts are as follow:

COVERING WARRANTS, with which the Treasurer is charged, viz:

1. Miscellaneous Revenue, and Revenue Counter.
2. Customs Revenue.
3. Lands Revenue.
4. Internal Revenue.
5. Miscellaneous Repay and Counter.
6. Interior Repay and Counter.
7. War Repay and Counter.
8. Navy Repay and Counter.

PAY WARRANTS, with which the Treasurer is credited, viz:

1. Treasury.
2. Quarterly Salaries.
3. Judiciary.
4. Diplomatic.
5. Customs.
6. Interior Civil.
7. Internal Revenue.
8. Public Debt.
9. Interior.
10. War.
11. Navy.

(Rev. Stats., 248, 269, 305, 3675.)

II.—Accounts of the Assistant Treasurers of the United States at—

Boston,
New York,
Philadelphia,
Baltimore,
Cincinnati,
Chicago,
St. Louis,
New Orleans,
San Francisco,—for salaries and contingent expenses.
(Rev. Stats., 3595–3613, 3622, 3623, 3648.)

III.—Public Printer's accounts.

1. Salaries. (Rev. Stats., 3759, 3762, 3817; 21 Stats., 215.)
2. Contingent expenses. (21 Stats., 215.)
3. Wages of proof-readers, compositors, pressmen, binders, laborers, and others. (Rev. Stats., 3763, 3817.)
4. Material, machinery, &c. (Rev. Stats., 3760, 3815.)
5. Paper. (21 Stats., 278.)
6. Sales of old material, waste paper, &c. (Rev. Stats., 3818.)

IV.—The clerk in charge of the Division examines requisitions for advances to the Public Printer and Assistant Treasurers; keeps the records of appointments, promotions, and resignations in the office; makes up the monthly time report and pay-roll, and disburses the salaries of the employés of the First Comptroller's Office.

H. Ex. Doc. 81—29

FIRST COMPTROLLER'S OFFICE.*Division of Mints and Assay Offices.*

In this Division all accounts of expenditures for the support of the United States mints and assay offices; of the gold and silver bullion, and minor-coinage metal deposited and purchased; and of the operations upon the same at the mints and assay offices, are examined and finally adjusted, after having been audited and reported by the First Auditor. (Rev. Stats., 269.)

The regular accounts of the five mints located respectively at Philadelphia, San Francisco, Carson City, New Orleans, and Denver, and of the four assay offices at New York, Boisé City, Charlotte, N. C., and Helena, Mont., are rendered by their respective superintendents, or other officer in charge, to the Director of the Mint, and are classed as follows, viz:

1. Accounts for ordinary expenses.
2. Accounts for bullion deposits and purchases.
3. Accounts for parting and refining expenses.
4. Coinage of the standard silver dollar.
5. Accounts for the manufacture and sale of medals.

I.—*Ordinary Expenses:*

These accounts, comprising payments for salaries of officers and clerks, wages of workmen, and contingent expenses of the mints and assay offices, accompanied by the proper vouchers, certified and approved according to the mint regulations, are reported in monthly statements by the superintendent to the Director of the Mint, for the latter's inspection and approval; after which they are by him referred to the First Auditor for his proper action thereon. The Auditor states and settles these accounts quarterly. (Rev. Stats., 3504; Regulations of Mints and Assay Offices, 1874, pp. 21, 22.)

II.—*Accounts of Bullion Deposits and Purchases:*

These are made up and reported quarterly for inspection, approval, and adjustment to the Director of the Mint. They consist of abstracts of gold and silver bullion and minor-coinage metal deposited and purchased, accompanied with proper vouchers, certified and approved. The accounts are required to exhibit, in certain prescribed forms, the results of the operations in the mints and assay offices upon the bullion, and to show the amount operated upon, the amounts converted into bars and coinage, the earnings, profits, loss, and wastage. (Rev. Stats., 3504.)

III.—*Accounts for Parting and Refining Expenses:*

These are for the payments on account of wages of workmen and for incidental expenses incurred in the operation of parting and refining bullion at the mints and assay offices. They are rendered monthly in the same manner as are those for the ordinary expenses. The expenses are paid wholly out of the fund arising from the charges collected from depositors at the mints and assay offices. (20 Stats., 190; 21 Stats., 223.)

IV.—Accounts for Expenses of the Coinage of the Standard Silver Dollar :

These, like the preceding accounts for parting and refining, are for wages of workmen and incidental expenses incurred in executing the coinage of the silver dollar. They are reported quarterly by the superintendent to the Director of the Mint. (20 Stats., 192.)

V.—Accounts for the Manufacture of Medals :

These are rendered quarterly to the Director by the superintendent of the mint at Philadelphia, and adjusted like the other accounts. The profits arising from the sale of medals are paid into the Treasury of the United States. The Government incurs no expense on account of medals, except for medals given by the Government. (Rev. Stats., 3552.)

Besides the regular accounts of the mints and assay offices there are numerous other accounts or claims presented at the Department for settlement by sundry parties for articles furnished or services performed for the mints and assay offices. These accounts or claims first pass through the Bureau of the Mint and receive the approval of the Director, after which they are referred to the First Auditor for settlement. They are paid directly by draft at the Treasury. (Rev. Stats., 3552.)

Requisitions for advances of public moneys to the superintendent or officer in charge, respectively, of the several mints and assay offices, for disbursement in payment of the expenses of these institutions, are examined in this Division, and reports are made thereon. (Rev. Stats., 3614, 3648.)

Regular accounts with each specific appropriation for salaries, wages, freight on bullion and coin, repairs and machinery, and contingent and incidental expenses, are kept in this Division, as also accounts in regular form with each superintendent or officer in charge of the mint or assay office, wherein the officer is debited with the sums advanced to him upon his requisitions, and credited for the amount of his disbursements upon vouchers approved and allowed in adjustment of his accounts.

These accounts are not required by any law or regulation to be kept in this Division; but they are found to be necessary for the purposes of securing accuracy in adjusting the regular accounts of the superintendents or disbursing officers of the mints which are authorized by law, of guarding against accidental overdrafts on the appropriations, and of expediting the work to be done.

FIRST COMPTROLLER'S OFFICE.

Division of Miscellaneous Accounts.

The various regular and occasional accounts which are adjusted in this Division are reported by the First and Fifth Auditors; all which are not mentioned as coming from the Fifth Auditor being examined and reported by the First Auditor. The accounts are such as do not properly belong to any other Division in the office, and they do not admit of any compendious classification indicative of their nature. The following are the usual accounts referred hither:

- I.—Salary of the President of the United States. (Rev. Stats., 153.)
- II.—Salaries and mileage of Senators. (14 Stats., 323.)
- III.—Salaries and mileage of members of the House of Representatives. (14 Stats., 323.)
- IV.—Salaries in the Executive Mansion. (20 Stats., 183.)
- V.—Salaries in the Executive Departments. (Rev. Stats., 160, amended by act June 20, 1874, 18 Stats., p. 4; 163-'5, 167, 168, 169, 170, 171, 172, 176, 177, 234, 242; 18 Stats., 396; 19 Stats., 148; 20 Stats., 78.)
- VI.—Salaries, Library of Congress. (Rev. Stats., 90; 20 Stats., 182; 21 Stats., 4.)
- VII.—Contingent expenses, Library of Congress. (Rev. Stats., 85.)
- VIII.—Contingent expenses, State Department. (Rev. Stats., 209.) Reported by the Fifth Auditor.
- IX.—Contingent expenses, Treasury Department. (Rev. Stats., 192, 240, 241.)
- X.—Contingent expenses, War Department. (Rev. Stats., 192, 228.)
- XI.—Contingent expenses, Navy Department. (Rev. Stats., 192, 429; 3 Stats., 567.)
- XII.—Contingent expenses, Department of Justice. (Rev. Stats., 192, 371, 384; 16 Stats., 163, 164.)
- XIII.—Contingent expenses, Post-Office Department. (Rev. Stats., 192, 413; 17 Stats., 285.) Reported by the Fifth Auditor.
- XIV.—Contingent expenses, Interior Department. (Rev. Stats., 192, 444; 9 Stats., 395.)
- XV.—Contingent expenses, Patent Office. (Rev. Stats., 192, 494, 496; 16 Stats., 199, 209.) Reported by the Fifth Auditor.
- XVI.—Salaries in the Department of Agriculture. (Rev. Stats., 522, 523; 12 Stats., 387; 20 Stats., 4.)
- XVII.—Contingent expenses, Department of Agriculture. (Rev. Stats., 192, 528; 21 Stats., 296.)
- XVIII.—Salary of the reporter of the Supreme Court of the United States. (Rev. Stats., 681, 682.)
- XIX.—Contingent expenses of the Court of Claims. (Rev. Stats., 1056.)
- XX.—Reporting decisions of the Court of Claims. (21 Stats., 237.)
- XXI.—Suppressing counterfeiting and other crimes. (Letter of Secretary of the Treasury to Solicitor of the Treasury, dated December 22, 1863; 21 Stats., 265.)

- XXII.—Maryland Institution for the Instruction of the Blind. (Rev. Stats., 4869.)
 XXIII.—American Printing-House for the Blind. (20 Stats., 467.)
 XXIV.—Salaries and expenses of the National Board of Health. (20 Stats., 484; 21 Stats., 5.)
 XXV.—Entomological Commission. (19 Stats., 357.)
 XXVI.—Protection and improvement of Yellowstone National Park. (Rev. Stats., 2475; 20 Stats., 229.)
 XXVII.—Conveying votes of electors for President and Vice-President of the United States. (21 Stats., 266.)
 XXVIII.—Clerk for records of Southern Claims Commission. (21 Stats., 253.)
 XXIX.—Expenses of the Eighth Census. (21 Stats., 52.) Reported by the Fifth Auditor.
 XXX.—Expenses of the Ninth Census. (21 Stats., 52.) Reported by the Fifth Auditor.
 XXXI.—Expenses of the Tenth Census. (20 Stats., 473; 21 Stats., 75, 275.) Reported by the Fifth Auditor.
 XXXII.—Bureau of Engraving and Printing, Transfer Accounts. (Rev. Stats., 3577.)
 XXXIII.—Pacific Railroad Accounts for Transportation for the United States. (Rev. Stats., 277, 5260; 18 Stats., 74, 453.)

Circular—Transportation Services performed by Pacific Railroad Companies.

1880.
 DEPARTMENT NO. 55. }
 Secretary's Office.

TREASURY DEPARTMENT,
 Washington, D. C., June 24, 1880.

The following opinion of the Attorney-General, in relation to withholding payments from Pacific Railroad Companies for transportation services performed for the Government, is published for the information of all concerned.

H. F. FRENCH,
Acting Secretary.

DEPARTMENT OF JUSTICE,
 Washington, June 18, 1880.

SIR: Yours of the 7th ultimo refers to me certain questions suggested by the Quartermaster-General, to each of which I subjoin my answer in the order of presentation:

"1st. Shall all compensation due for transportation services rendered for the Quartermaster's Department over those portions of the Union and Central Pacific Railroads which were built by aid of Government bonds be withheld?"

Answer. Yes. The second section of the act of May 7, 1878, chapter 96, expressly declares: "SEC. 2. That *the whole* amount of compensation which may, from time to time, be due to said several railroad companies, respectively, for services rendered for the Government, shall be retained by the United States," &c. (20 Stat., 58.) This act was intended to change the pre-existing law, and could hardly be made more explicit.

"2d. Shall full compensation be made for all transportation services rendered for the Quartermaster's Department over those portions of roads owned, leased, controlled, and operated by said Union and Cen-

tral Pacific Railroad Companies which were not built by aid of Government bonds, or shall all compensation due for such services be withheld?"

Answer. Though the Supreme Court held, in *United States vs. Kansas Pacific Railway Company*, (99 U. S., 455,) that the bonds issued to that corporation are not a lien beyond the 100th meridian, nor is the company liable for *five per cent.* of its earnings beyond that point, yet, in the following case, *United States vs. Denver Pacific Railway Company*, (99 U. S., 460,) the court, in a note, based its exemption of the road from liability to have its compensation for Government transportation withheld upon the fact that the company (Denver Pacific Railway Company) was *not indebted* to the United States. The Central and Union Pacific Railroad Companies, owning, leasing, controlling, and operating the branches referred to in this inquiry, *are* indebted to the United States upon subsidy bonds. In this state of the decisions, I advise the retention of *all* compensation to these roads for services upon such branches, so that the question can be judicially determined.

"3d. Shall *all compensation* due for transportation services rendered for the Quartermaster's Department over that portion of the Kansas Pacific Railroad—393 $\frac{1}{2}$ miles—which was built by aid of Government bonds, or *only one-half of such compensation*, be withheld?"

Answer. All compensation should be withheld over the entire length of this road, under Revised Statutes, section 5260, still in force, which declares:

"The Secretary of the Treasury is directed to withhold all payments to any railroad company and its assigns, on account of freights or transportation over their respective roads of any kind, to the amount of payments made by the United States for interest upon bonds of the United States issued to any such company, and which shall not have been reimbursed, together with the five per centum of net earnings due and unapplied, as provided by law."

"4th. Shall any part, and, if so, what part, of the compensation due for transportation services rendered for the Quartermaster's Department over that portion of said Kansas Pacific Railroad—244 miles—which was built without aid of Government bonds, be withheld?"

Answer. For reasons indicated in my reply to your second question, I think *all* compensation should be withheld as to this portion of that road, as well as to that in aid of which bonds issued.

Your fifth question states that the Kansas Pacific and Denver Pacific have been consolidated with the Union Pacific, and asks if payment for services over these lines should be withheld and applied to the debt of the Union Pacific.

Answer. As stated in the second answer, the compensation should be entirely withheld, until otherwise directed by the court, because the Kansas Pacific Railway Company is indebted for interest paid by the United States upon its subsidy bonds. (R. S., sec. 5260.)

"6th. Shall *all compensation* due for transportation for the Quartermaster's Department over those portions of the Sioux City and Pacific and the Central Branch Union Pacific Railroads, which were built

by aid of Government bonds, be withheld, or shall only one-half of such compensation be withheld?"

Answer. All; because derelict in payment of interest. (R. S., sec. 5260.)

"7th. Shall any part, and, if so, what part, of the compensation due for transportation services rendered for the Quartermaster's Department over lines owned, leased, controlled, and operated by said Sioux City and Pacific and Central Branch Union Pacific Railroad Companies, which were not built by aid from Government bonds, be withheld?"

Answer. All; for reasons indicated in the second answer. (R. S., sec. 5260.)

None of these corporations appear to be affected by the act relating to the compensation of roads which received grants of land upon the condition of a free use of the road. Of course considerations additional to those above suggested would arise as to any such company.

The letters of the Secretary of War and of the Quartermaster-General are herewith returned, as requested.

Very respectfully, your obedient servant,

CHAS. DEVENS,
Attorney-General.

HON. JOHN SHERMAN,
Secretary of the Treasury.

XXXIV.—Post-Office Department, Postage Transfer Accounts. (19 Stats., 169.)

XXXV.—Directors of Providence Hospital. (21 Stats., 270.)

XXXVI.—Crane & Co., paper for National Currency. (18 Stats., 372; 21 Stats., 265.)

XXXVII.—Construction of Public Buildings. (Rev. Stats., 255, 3597, 3654, 3657, 3684, 3733, 5503; 18 Stats., 415.)

XXXVIII.—Coast Survey. (Rev. Stats., 4681–4691; 5 Stats., 640; plan of 1843.)

XXXIX.—Public Buildings and Grounds, District of Columbia. (Rev. Stats., 1797–1800.)

XL.—Washington Monument. (19 Stats., 123; 20 Stats., 254.)

XLI.—Repairs of Capitol and Improvement of Grounds. (Rev. Stats., 1816.)

XLII.—United States Fish Commission. (Rev. Stats., 4395–4398.)

XLIII.—Smithsonian Institution. (Rev. Stats., 3689, 5590–5593.) Reported by the Fifth Auditor.

XLIV.—Charitable Institutions, District of Columbia:

(1.) Columbia Institution for the Deaf and Dumb. (Rev. Stats., 4859–4869.)

(2.) National Association for Relief of Destitute Colored Women and Children. (14 Stats., 317.)

(3.) Children's Hospital. (17 Stats., 518.)

(4.) Industrial Home School. (20 Stats., 208.)

(5.) Columbia Hospital for Women and Lying-in Asylum. (14 Stats., 316.)

(6.) Women's Christian Association. (20 Stats., 404.)

(7.) St. Ann's Infant Asylum. (20 Stats., 208.)

(8.) Little Sisters of the Poor. (21 Stats., 157.)

- (9.) German Orphan Asylum. (21 Stats., 157.)
- (10.) Freedmen's Hospital. (18 Stats., 386.)
- (11.) Reform School. (17 Stats., 35, 118.)
- (12.) Howard University. (20 Stats., 404.)

FIRST COMPTROLLER'S OFFICE.

Division of Public Lands.

In this Division, the following accounts, after being audited by the Commissioner of the General Land Office, are revised and certified to the Register of the Treasury. (Rev. Stats., 269, 456.)

I.—*Accounts of Receivers of Public Moneys:*

1. For moneys received from sales of public lands. (Rev. Stats., 2225, 2234, 2236, 2237, 2238, 2239, 2240, 2243, 2244, 3617, 3620, 3622, 3623, 3639, 3648.)
2. For compensation of receivers, and disbursements for office expenses of receivers and registers, and compensation of registers. (Rev. Stats., 2225, 2234, 2237, 2238, 2239, 2240, 2243, 2244, 3614, 3620, 3622, 3623, 3639, 3648.)

II.—*Accounts of Surveyors-General* for compensation and office expenses. (Rev. Stats., 2207, 2208, 2210, 2211, 2215, 2217, 2226, 2227.)

III.—*Accounts of Deputy Surveyors* for surveying the public lands. (Rev. Stats., 2223, 2230, 2398, 2400, 2407.)

IV.—*Accounts of States:*

1. For per centum on net proceeds of sales of the public lands within their respective boundaries. (Rev. Stats., 3689, and acts for admission of the several States.)
2. For payments to States of proceeds of swamp-lands within their respective boundaries erroneously sold by the United States. (Rev. Stats., 2482, 3689.)

V.—*Accounts for Refunding Moneys* to purchasers of lands erroneously sold by the United States. (Rev. Stats., 2362, 2363; 21 Stats., 287; U. S. Land Laws, 1880, pp. 164, 165.)

VI.—This Division also prepares transcripts of accounts and official bonds for suit, and receives, examines, and files bonds of land officers, as follow (Rev. Stats., 269, 3624, 3638):

1. Bonds of receivers of public moneys. (Rev. Stats., 2236.)
2. Bonds of receivers acting as disbursing agents. (9 Stats., 398.)
3. Bonds of registers of land offices. (Rev. Stats., 2236.)
4. Bonds of surveyors-general. (Rev. Stats., 2215, 2216.)
5. Bonds of deputy surveyors. (Rev. Stats., 2230.)
6. Bonds of special agents of General Land Office. (Rev. Stats., 3614.)

Herewith are subjoined the references, by date and volume, to the legislation of Congress relative to percentages allowed to States from proceeds of sales of public lands:

Acts granting 2, 3, or 5 per centum of the net proceeds of sales of public lands to States.

Ohio: April 30, 1802; March 3, 1803. (2 Stats., 173, 225.)

Indiana: April 19, 1816; December 11, 1816; April 11, 1818. (3 Stats., 289, 399, 424.)

Mississippi: March 1, 1817; September 4, 1841; March 3, 1857. (3 Stats., 348; 5 Stats., 457; 11 Stats., 200.)

Illinois: April 18, 1818. (3 Stats., 428.)

Alabama: March 2, 1819; September 4, 1841; January 25, 1853; March 2, 1855. (3 Stats., 489; 5 Stats., 457; 10 Stats., 153, 630.)

Missouri: March 6, 1820. (3 Stats., 545.)

Arkansas: June 23, 1836. (5 Stats., 58.)

Michigan: June 23, 1836; January 26, 1837. (5 Stats., 59, 144.)

Iowa: March 3, 1845. (5 Stats., 742, 788, 789.)

Florida: March 3, 1845. (5 Stats., 742, 788, 789.)

Wisconsin: August 6, 1846; March 3, 1847. (9 Stats., 56, 178.)

Minnesota: February 26, 1857; May 11, 1858. (11 Stats., 166, 285.)

Oregon: February 14, 1859; March 3, 1859. (11 Stats., 383, 437.)

Kansas: January 29, 1861. (12 Stats., 126.)

Nevada: March 21, 1864. (13 Stats., 30.)

Nebraska: April 19, 1864. (13 Stats., 49.)

Colorado: March 21, 1864; March 3, 1875. (13 Stats., 32; 18 Stats., 474.)

FIRST COMPTROLLER'S OFFICE.

Division of Territorial Accounts.

The accounts adjusted in this Division pertaining to the Territories and to the Judiciary are first examined and stated by the First Auditor, and those relating to the inspection of steam-vessels are first examined by the Supervising Inspector-General, and then examined and stated by the First Auditor. After being revised, adjusted, and properly recorded in this Division, the accounts are certified and transmitted to the Register of the Treasury. (Rev. Stats., 248, 250, 268, 269, 276, 277, 312, 313, 4403, 4462.)

TERRITORIAL ACCOUNTS.

I.—Legislative Expenses: Accounts of Territorial secretaries for—

- (1.) Mileage of members of the Territorial Council and of members of the Territorial House of Representatives. (Rev. Stats., 1846, 1849, 1853, 1886, 1888.)
- (2.) Per diem of members of the Territorial Council; of members of the Territorial House of Representatives; and of the officers of the Council and House of Representatives. (Rev. Stats., 1846–1849, 1852 (as amended December 23, 1880), 1853, 1854, 1861, 1886, 1888.)
- (3.) Incidental expenses of Territorial secretary's office, as office-rent, furniture, stationery, postage, fuel, lights, &c.; and of Territorial Council and House of Representatives, as rent of halls, committee-rooms, furniture, stationery, fuel, lights, &c. (Rev. Stats., 1843, 1844, 1846, 1849, 1852 (as amended December 23, 1880), 1854, 1855, 1886, 1888.)

(4.) Public printing, as messages of Governor, bills, laws, and journals of Territorial Council and House of Representatives, and other printing for the Legislative Assembly. (Rev. Stats., 1844, 1887, 1888.)

(5.) Expenses of boards of apportionment. (Rev. Stats., 1849.)

(6.) Salaries of messengers for Territorial secretaries, and, when allowed, of clerks or assistants. (Rev. Stats., 248, 250, 1843, 1844.)

II.—Contingent Expenses: Accounts of Territorial Governors for—

(1.) Incidental expenses, for rent of office, fuel, light, stationery, &c. (Rev. Stats., 1841, 1935.)

(2.) Salaries of interpreters and translators. (21 Stats., 225.)

(3.) Writing letters pertaining to contingent expenditures.

III.—Salaries, Governors, &c.: Accounts for—

(1.) Salaries of Territorial Governors. (Rev. Stats., 1841, 1845, 1877, 1882.)

(2.) Salaries of Territorial secretaries. (Rev. Stats., 1843, 1845, 1877, 1882.)

(3.) Salaries of Territorial chief justices. (Rev. Stats., 1877, 1879, 1882.)

(4.) Salaries of Territorial associate judges. (Rev. Stats., 1877, 1879, 1882.)

(5.) Salaries of Territorial marshals. (Rev. Stats., 1876, 1877, 1881, 1882.)

(6.) Salaries of Territorial attorneys. (Rev. Stats., 1875, 1880, 1882.)

IV.—Regulation of Steam-Vessels: Inspection. (Rev. Stats., 4399, 4401.)

(1.) Salary of Supervising Inspector-General. (Rev. Stats., 3689, 4402, 4461, 4462.)

(2.) Salaries of supervising inspectors. (Rev. Stats., 3689, 4404, 4461, 4462.)

(3.) Salaries of local inspectors of hulls and boilers. (Rev. Stats., 3689, 4414, 4461, 4462.)

(4.) Salaries of local assistant inspectors of hulls and boilers. (Rev. Stats., 3689, 4414, 4461, 4462.)

(5.) Salaries of clerks. (Rev. Stats., 3689, 4461, 4462.)

(6.) Salaries of janitors. (Rev. Stats., 3689, 4461, 4462.)

V.—Incidental Expenses, for—

(1.) Travelling and other expenses—annual conventions of supervising inspectors. (Rev. Stats., 3689, 4405, 4461, 4462.)

(2.) Travelling and other expenses of Supervising Inspector-General. (Rev. Stats., 3689, 4406, 4461, 4462.)

(3.) Travelling and other expenses of supervising inspectors. (Rev. Stats., 3689, 4406, 4461, 4462.)

(4.) Travelling and other expenses of local inspectors. (Rev. Stats., 3689, 4414, 4461, 4462.)

(5.) Travelling and other expenses of local assistant inspectors. (Rev. Stats., 3689, 4416, 4461, 4462.)

(6.) Office-rent, furniture, fuel, lights, instruments, books, blanks, stationery, &c. (Rev. Stats., 248, 250, 269, 3689, 4461, 4462.)

(7.) Transportation of instruments, stationery, &c. (Rev. Stats., 248, 250, 269, 3689, 4461, 4462.)

MISCELLANEOUS.

VI.—Salaries—Judicial, &c.:

(1.) Salary of the Vice-President. (Rev. Stats., 137, 154.)

(2.) Salary of the Chief Justice of the Supreme Court of the United States. (Rev. Stats., 673, 676, 3689.)

- (3.) Salaries of the associate justices of the Supreme Court of the United States. (Rev. Stats., 673, 676, 3689.)
- (4.) Salaries of circuit judges. (Rev. Stats., 607, 3689.)
- (5.) Salaries of district judges. (Rev. Stats., 551, 554, 3689.)
- (6.) Salary of the chief justice of the Supreme Court of the District of Columbia. (12 Stats., 762; 14 Stats., 55; Rev. Stats. Dist. of Columbia, §§ 750, 751.)
- (7.) Salaries of the associate justices of the Supreme Court of the District of Columbia. (12 Stats., 762; 14 Stats., 55; Rev. Stats. Dist. of Columbia, §§ 750, 751.)
- (8.) Salaries of retired judges. (Rev. Stats., 714, 3689.)
- (9.) Salary of the Chief Justice of the Court of Claims. (Rev. Stats., 1049.)
- (10.) Salaries of the judges of the Court of Claims. (Rev. Stats., 1049.)
- (11.) Salary of the clerk of the Supreme Court of the United States. (Rev. Stats., 677.)
- (12.) Salary of the marshal of the Supreme Court of the United States. (Rev. Stats., 677, 680.)
- (13.) Salaries of district attorneys. (Rev. Stats., 767, 770.)
- (14.) Salaries of United States marshals. (Rev. Stats., 776, 781.)
- (15.) Salary of chief clerk of Court of Claims. (Rev. Stats., 1053, 1054.)
- (16.) Salary of assistant clerk of Court of Claims. (Rev. Stats., 1053, 1054.)
- (17.) Salary of messenger of Court of Claims. (Rev. Stats., 1053, 1054.)
- (18.) Salary of bailiff of the Court of Claims. (Rev. Stats., 1053, 1054.)
- (19.) Correspondence in relation to salary accounts.

VII.—Among other *Miscellaneous Work*, occur—

- (1.) Preparing cases for suit. (Rev. Stats., 269, 886, 1766, 3624, 5491.)
- (2.) Estimating for annual Congressional appropriations for legislative and contingent expenses of Territories. (Rev. Stats., 257, 269, 1886.)
- (3.) Filing bonds of Territorial secretaries as disbursing agents. (Rev. Stats., 248, 250, 269, 886, 3614.)
- (4.) Filing oaths of office of Territorial secretaries. (Rev. Stats., 248, 250, 269, 1878.)
- (5.) Examining applications for advances to Territorial secretaries from appropriations for legislative expenses. (Rev. Stats., 3678, 3679.)
- (6.) Indorsing certificates of deposit for covering warrants to be issued to balance Territorial secretaries' accounts. (Rev. Stats., 250, 1886.)
- (7.) Writing letters pertaining to legislative expenditures.
- (8.) Filing bonds of inspectors of steam-vessels. (Rev. Stats., 248, 250, 269, 3614, 4459, 4461, 4462.)
- (9.) Filing oaths of office of inspectors of steam-vessels. (Rev. Stats., 248, 250, 269, 1756, 4459, 4461, 4462.)
- (10.) Writing letters pertaining to accounts for inspection of steam-vessels.

FIRST COMPTROLLER'S OFFICE.*Division of District of Columbia Accounts.*

The following accounts, reported by the First Auditor, are examined and adjusted in this Division. (20 Stats., 102-108.)

I.—Accounts of the Commissioners of the District of Columbia for disbursements under the appropriations for—

- (1.) Improvements and repairs.
- (2.) Constructing, repairing, and maintaining bridges.
- (3.) Washington Asylum.
- (4.) Georgetown Almshouse.
- (5.) Transportation of paupers and conveying prisoners to workhouse.
- (6.) Support of indigent insane of the District.
- (7.) Reform School.
- (8.) Relief of the poor.
- (9.) Salaries and contingent expenses, offices, District of Columbia, including—
 - (a.) Executive office.
 - (b.) Auditor and Comptroller's office.
 - (c.) Old records division.
 - (d.) Special-assessment division.
 - (e.) Treasurer and Assessor's office.
 - (f.) Collector's office.
 - (g.) Sinking-fund office.
 - (h.) Coroner's office.
 - (i.) Attorney's office.
 - (j.) Office of inspector of buildings.
 - (k.) Division of property office.
 - (l.) Division of streets, alleys, and county roads.
 - (m.) Office of inspector of gas and meters.
 - (n.) Harbor master and sealer of weights and measures.
 - (o.) Engineer's office.
 - (p.) Miscellaneous expenses, District offices.
- (10.) Streets, including removal of garbage, parking commission, street lamps, &c.
- (11.) Public schools.
- (12.) Metropolitan police.
- (13.) Fire department.
- (14.) Police court, &c.
- (15.) Markets.
- (16.) Health department.
- (17.) Miscellaneous and contingent expenses. (20 Stats., 105; 21 Stats., 155-162.)
- (18.) Refunding taxes. (Act Legislative Assembly of District of Columbia, January 19, 1872, Part III, 52; 20 Stats., 108.)
- (19.) Redemption of tax-lien certificates. (Acts Legislative Assembly, 1873, pp. 51-55; 20 Stats., 102.)

(20.) Washington special-tax fund. (Webb's Digest, 158, 360; 20 Stats., 102.)

(21.) Washington redemption fund. (Webb's Digest, 103; 19 Stats., 398.)

(22.) Redemption of Pennsylvania Avenue paving-scrip. (16 Stats., 196.)

(23.) Redemption of Pennsylvania Avenue paving-certificates. (19 Stats., 92.)

(24.) Water department. (Rev. Stats. rel. to District of Columbia, p. 22, chap. 8; 20 Stats., 105.)

(25.) Filling, &c., grounds south of the Capitol. (21 Stats., 300.)

II.—Accounts of collector of taxes :

(1.) General account.

(2.) Account for water-rents and taxes. (20 Stats., 105.)

III.—Accounts of the treasurer of the District :

(1.) General account.

(2.) Account for water-rents and taxes. (20 Stats., 105.)

IV.—General account between the United States and the District of Columbia. (20 Stats., 103; 21 Stats., 162.)

V.—In addition to the foregoing :

(1.) The collector's daily returns are examined, and certificates of deposit indorsed, directing how the amounts collected shall be covered into the United States Treasury.

(2.) Requisitions for advances out of appropriations other than those before mentioned are examined and prepared for the recommendation of the Comptroller, as follow :

(a.) Columbia Hospital for Women and Lying-in Asylum.

(b.) Children's Hospital.

(c.) Saint Ann's Infant Asylum.

(d.) Industrial Home School.

(e.) National Association for [the Relief of Destitute] Colored Women and Children.

(f.) Women's Christian Association.

(g.) Little Sisters of the Poor.

(h.) German Orphan Asylum.

(i.) Interest and sinking fund. (20 Stats., 105; 21 Stats., 157, 162.)

FIRST COMPTROLLER'S OFFICE.

Division of Accounts for Transportation of Moneys and Securities.

Under a contract which took effect on February 1, 1879, the Adams Express Company became the agent for the transportation of all moneys and securities belonging to the United States, except securities in transit from the Treasury Department to the sub-treasury at New York, or from the latter to the Treasury Department, which have not become effective by delivery to purchasers. This agreement does not embrace sea or river transportation, and does not extend westward beyond Omaha, Nebraska.

Under agreements made from time to time between the Secretary of the Treasury and Wells, Fargo & Co., gold and silver coin and bullion and United States currency are transported from point to point in the western States and Territories.

The following accounts, arising under these agreements, having been received and examined by the proper auditing offices, are reported to this office for revision, and adjusted in this Division (Rev. Stats., 3620, 3640, 3653):

FROM THE FIRST AUDITOR.

- I.—Gold coin and bullion.
- II.—Silver coin and bullion.
- III.—Currency, including United States notes, United States Treasury notes, United States fractional currency, and bank notes of national banks, complete and incomplete, (except notes of national banks sent to Washington for redemption.) (18 Stats., 123; 20 Stats., 275.)
- IV.—Certificates of indebtedness.
- V.—Bonds, registered and coupon.
- VI.—Cancelled securities.
- VII.—Gold and silver certificates.
- VIII.—Base or minor coins.
- IX.—Mutilated currency, and United States currency returned therefor.
- X.—United States notes in redemption of national-bank notes returned, fit for circulation.
- XI.—Incomplete currency and incomplete silver certificates.
- XII.—Miscellaneous; embracing customs coin and currency, paper for the Printing Bureau, boxes, stationery, parcels, &c.

FROM THE FIFTH AUDITOR.

- XIII.—Internal-revenue moneys to sub-treasuries and designated depositaries.
- XIV.—Stationery, boxes, parcels, &c.

FROM THE COMMISSIONER OF THE GENERAL LAND OFFICE.

- XV.—Public moneys from the local land offices to designated depositaries. (Rev. Stats., 456.)

FIRST COMPTROLLER'S OFFICE.

Division of Bonds, Contracts, and Powers of Attorney.

In this Division, all contracts, except those of deputy surveyors of public lands, connected with the settlement of accounts in this office; all official bonds, not elsewhere kept in the office, of officers rendering those accounts; and all powers of attorney in relation to claims and accounts, are recorded and filed. (Rev. Stats., 3743.)

All letters received by the First Comptroller, and letters written by him relating to the accounts for expenses of courts, and miscellaneous matters, are registered, and a brief record of their contents is made.

FIRST COMPTROLLER'S OFFICE.

Division of Records.

In this Division are registered all the accounts that come to this office for settlement from the First and Fifth Auditors, except the revenue collection, disbursing, and compensation accounts of collectors of internal revenue.

This registry includes an entry of the names of the officers or persons whose accounts have been audited; the date, number, and nature of each account; the date of its reception, and the Division to which it is referred for examination.

After adjustment, the date of the Comptroller's certificate, and the balance certificate, are entered; and when payment is to be made, the date and number of the warrant for payment are also entered.

DEPARTMENT FILES.

All books, records, and files of a general nature are kept in the respective offices or bureaus to which they belong.

Register.

The *Register of the Treasury* keeps the files of—

(1.) All accounts (except those of the customs service) audited by the First Auditor, the Fifth Auditor, and the Commissioner of the General Land Office, and which are adjusted by the First Comptroller.

(2.) All accounts of the customs service audited by the First Auditor and adjusted by the Commissioner of Customs. (Rev. Stats., 313.)

Second Auditor.

The *Second Auditor* keeps the files of—

(1.) All accounts of the Department of War audited by him and adjusted by the Second Comptroller. (Rev. Stats., 283.)

(2.) All accounts of the Department of the Interior (Indian) audited by him and adjusted by the Second Comptroller. (Rev. Stats., 283.)

Third Auditor.

The *Third Auditor* keeps the files of—

(1.) All accounts of the Department of War audited by him and adjusted by the Second Comptroller. (Rev. Stats., 283.)

(2.) All accounts of the Department of the Interior (Pensions) audited by him and adjusted by the Second Comptroller. (Rev. Stats., 283.)

Fourth Auditor.

The *Fourth Auditor* keeps the files of all accounts of the Department of the Navy audited by him and adjusted by the Second Comptroller. (Rev. Stats., 283.)

Sixth Auditor.

The *Sixth Auditor* keeps the files of all accounts of the Post-Office Department audited and adjusted by him. (Rev. Stats., 277.)

CHAPTER II.

ACCOUNTS EXAMINED AND AUDITED IN THE OFFICE OF THE FIRST AUDITOR OF THE TREASURY DEPARTMENT.

By reason of the original organization of the accounting offices of the Treasury, it has become a settled practice to refer to the First Auditor, for examination and statement, all accounts which are not by statutory provision referred to any of the other Auditors; and for the same reason such accounts are reported by the First Auditor for revision and adjustment to the First Comptroller. (*Vide* Special-Session Case, 2 Lawrence, Compt. Dec., 92.)

FIRST AUDITOR'S OFFICE.

Division of Judiciary Accounts.

In this Division the following accounts are examined, audited, and reported to the First Comptroller of the Treasury for his decision thereon:

I.—Accounts of United States Marshals:

1. For fees for serving process in United States cases, and expenses of such service by marshal and deputies, and for attendance of marshal upon the sessions of the United States courts in the States, Territories, and District of Columbia. (Rev. Stats., 829, 830, 832, 837, 856, 868; Rev. Stats. rel. to District of Columbia, 897.)
2. For fees of jurors. (Rev. Stats., 802, 855; 21 Stats., 290.)
3. For fees of witnesses. (Rev. Stats., 848, 850, 855, 878; 21 Stats., 290; Rev. Stats. rel. to District of Columbia, 880.)
4. For support of prisoners in jails. (Rev. Stats., 830.)
5. For miscellaneous expenses of the courts, attendance of bailiffs' criers, for stationery, fuel, lights, furniture, watchmen, janitors, &c. (Rev. Stats., 830; 21 Stats., 43; Rev. Stats. rel. to District of Columbia, 902.)
6. For fees of supervisors of elections. (Rev. Stats., 2031.)
7. For excess of fees and emoluments of marshals. (Rev. Stats., 833, 834, 837, 841, 845.)

II.—Accounts of United States Attorneys:

1. For attendance, travel, and fees. (Rev. Stats., 824, 827, 836, 838, 4646.)
2. For excess of emoluments. (Rev. Stats., 833, 835, 843, 845; Rev. Stats. rel. to District of Columbia, 907, 909.)

III.—Accounts of Assistant United States Attorneys for salaries. (Rev. Stats., 363.)**IV.—Accounts of Clerks of United States Courts for attendance and fees.**

1. For attendance and fees. (Rev. Stats., 828, 840.)
2. For excess of emoluments. (Rev. Stats., 833, 839, 840, 842, 845.)

V.—Accounts of Commissioners of United States Circuit Courts for fees. (Rev. Stats., 847, 1986.)**VI.—Accounts of Chief Supervisors of Election for fees and expenses.** (Rev. Stats., 2031.)**VII.—Accounts for Rent of Court-Rooms.** (Rev. Stats., 830; 21 Stats., 43.)**VIII.—Accounts of State Prisons for support of convicts.** (Rev. Stats., 5546; 21 Stats., 43.)**IX.—Requisitions of United States Marshals for advances of money to defray expenses of United States courts are received and answered.****X.—Correspondence** relating to the settlement of the foregoing accounts is conducted by this Division, from which are also forwarded the acknowledgments of the receipt of all accounts belonging to the classes above enumerated.

FIRST AUDITOR'S OFFICE.**Division of Customs Accounts.**

The following accounts, examined and audited in this Division, are reported for adjustment to the Commissioner of Customs, except the accounts for sales of old materials, which are reported to the First Comptroller:

I.—Customs-Collection Account, embracing moneys received on all articles which by law are subject to tariff duty, and the tonnage-tax levied on all foreign vessels and on American vessels engaged in foreign trade. (Rev. Stats., 2491-2516.)**II.—Steamboat-Inspection Account**, including fees arising from inspection and examination of steam-vessels, and licenses issued to engineers, masters, pilots, mates, &c., and from sale of safety-valve locks. (Rev. Stats., 4458.)**III.—Fines, Penalties, and Forfeitures Account**, including all sums received from sale of merchandise forfeited and fines imposed for violation of the customs and navigation laws. (Rev. Stats., 4610; 19 Stats., 186.)**IV.—Marine-Hospital Collections Account**, embracing receipts from masters or owners of vessels of hospital-tax imposed on seamen of the merchant marine. (19 Stats., 485.)**V.—Official Emoluments Account**, including amounts paid for clerk-hire, &c., and compensation of collectors, naval officers, and surveyors. (Rev. Stats., 2690, 2691.)**VI.—Sales of Old Materials Account**, including moneys received from sales of old materials and rental of public property, &c. (Rev. Stats., 3617, 3618.)

- VII.—*Deceased Passenger Fund Account*, embracing moneys received from death on shipboard of immigrants. (Rev. Stats., 4268.)
- VIII.—*Disbursement Accounts*. Expenses of collecting the revenue from customs, including payment of the general expenses attending the collection of the revenue from customs, such as salaries of inspectors, weighers, gaugers, &c.; disbursements on account of revenue boats, appraisements, official expenses of weighers, gaugers, measurers, &c. (Rev. Stats., 3687, 3689.)
- IX.—*Debenture and Drawback Accounts*, embracing payments to importers of duties on merchandise imported but afterwards exported. (Rev. Stats., 3017, 3019.)
- X.—*Account for Excess of Deposits Refunded*, embracing payments to importers for excess of deposits for unascertained duties. (Rev. Stats., 3012½, 3689.)
- XI.—*Revenue-Cutter Service Account*, including payments for general expenses of the revenue-cutter service. (Rev. Stats., 2747–2765.)
- XII.—*Marine-Hospital Service Account*, embracing amounts expended for transportation, medical treatment, and maintenance of sick and disabled seamen of the merchant marine. (Rev. Stats., 4801–4813.)
- XIII.—*Awards of Compensation Account*, embracing payments to informers for service rendered or information furnished which has led to the recovery of duties or of penalties imposed. (19 Stats., 186.)
- XIV.—*Account of Repayments to Importers of Excess of Deposits, (Customs,)* including payments of judgments obtained against the United States, in customs cases; of duties exacted in excess; of amounts embraced in suits discontinued; fines remitted, &c. (Rev. Stats., 3012½, 3013.)
- In addition to the permanent appropriation made in the sections last cited, special appropriations are frequently made for the payments of similar cases, where the forms of law have not been complied with in the matter of protest and appeals, &c.; or where the appropriation, by reason of having lapsed into the Treasury, is not available for the payment of the claims.
- XV.—*Account of Salaries of Light-Keepers*. From the appropriation for this purpose are paid the necessary amounts for salaries of keepers and assistant keepers of light-houses. (Rev. Stats., 4653–4680.)
- XVI.—*Account of Expenses of Light-Vessels*, embracing payments for salaries of the keepers and crews of light-vessels. (Rev. Stats., 4653–4680.)
- XVII.—*Account of Commissions to Superintendents of Lights*, embracing allowances to superintendents of lights of commissions at 2½ per cent. on light-house disbursements. (Rev. Stats., 4672.)

FIRST AUDITOR'S OFFICE.

Division of Public Debt.

In this Division are examined and audited the accounts for the payment of interest on the public debt, both registered stock and coupon bonds; of interest on District of Columbia bonds; on Pacific Railroad bonds; on Louisville and Portland Canal bonds; accounts of the Navy-pension fund; of redemption of United States bonds, matured or other-

wise; of redemption of coin and currency certificates, old notes, and bounty-land scrip; accounts for legal-tender notes, fractional currency, and silver certificates destroyed; and which may be classified as follow:

- I.—*Registered Stock*: Loans of February 8, March 2, July 17, and August 5, 1861, and March 3, 1863 (12 Stats., 129, 178, 259, 313, 709), the interest of which is payable semi-annually out of the general appropriation act of February 9, 1847 (9 Stats., 123; Rev. Stats., 3689).
- II.—*Funded Loans*: 5 per cent. of 1881, 4½ per cent. of 1891, and 4 per cent. of 1907, issued under acts of July 14, 1870 (16 Stats., 272), and January 20, 1871 (16 Stats., 399), the interest on which, payable by check quarterly, is rendered in monthly accounts by the Treasurer, and paid out of the general appropriation.
- III.—*Pacific Railroad Stock*: Issued under acts of July 1, 1862 (12 Stats., 489), and July 2, 1864 (13 Stats., 356), the interest on which is payable semi-annually out of the general appropriation, and chargeable to said stock.
- IV.—*Louisville and Portland Canal Stock*: Act of May 11, 1874 (18 Stats., 43); Refunding certificates, act February 26, 1879 (20 Stats., 321); and Navy-pension fund, act of July 23, 1868 (15 Stats., 170), interest on which is payable out of the general appropriation.
- V.—*Coupon interest* on the several classes of bonds enumerated above, and still outstanding on bonds matured, is payable semi-annually or quarterly, as in the case of registered bonds, the accounts therefor being transmitted to the First Auditor monthly by the Treasurer. It is verified and the coupons cancelled in this Division, and then reported to the First Comptroller for revision and adjustment.
- VI.—*Interest of the District of Columbia Bonds*, payable quarterly and semi-annually from special appropriations. These securities may be classed as follows:
 1. Permanent improvement, acts of assembly, July 10 and December 16, 1871, and June 23 and 25, 1873.
 2. Market stock, acts of assembly, August 23, 1871, and June 19, 1873.
 3. Water stock acts of July 20, 1871, and June 26, 1873.
 4. Fifty-year funding stock, act of Congress, June 24, 1874; February 20 and March 3, 1875. (18 Stats., 332, 505.)
 5. Twenty-year funding stock, act of June 10, 1875.
 6. Three-sixty-five bonds of the District of Columbia, acts of June 20, 1874, (18 Stats., 116,) and February 20, 1875. (18 Stats., 332.)
 7. *Corporation Bonds of Washington*: Thirty-year funding bonds, act of assembly, June 20, 1872; twenty-year funding bonds, act of Congress, May 8, 1872; three-year bonds (Mayor Emery), act of July 7, 1870; general stock, act of city council, August 19, 1828.
 8. *Corporation Bonds of Georgetown*: General stock issued under authority of the city council, May 12, 1871.
- VII.—*Redemption Accounts*.—The accounts for the redemption of United States stock and other securities, matured or otherwise, may be classed as follows: (1st,) old debt, issued prior to 1837; (2d,) Mexican indemnity stock; (3d,) loan of 1847; (4th,) bounty-land scrip; (5th,) Texan indemnity stock; (6th,) loan of 1858; (7th,) loan of 1860; (8th,) called loans of 1862, and June, 1864; ten-forties of 1864, loan of 1865, consols of 1865, 1867, and 1868; (9th,) loan of

February, 1861; (10th,) Treasury notes prior to 1846, and subsequent dates; (11th,) seven-thirties of 1861; (12th,) one and two-year notes of 1863; (13th,) compound-interest notes; (14th,) seven-thirty notes of 1864-'5; (15th,) certificates of indebtedness; (16th,) temporary loans; (17th,) Louisville and Portland Canal bonds; (18th,) District of Columbia bonds, matured; (19th,) corporation of Washington stock; (20th,) corporation of Georgetown stock.

VIII.—As the registered stock is principally held by banking corporations and other institutions, by executors, administrators, trustees of estates, guardians of minors, non-residents, and constituents collecting interest through attorneys, the evidence of the authority of all such parties to receipt for interest is required to be filed with the First Auditor. The papers containing this evidence are registered in books under their proper vowels, numbered and filed, held as vouchers for the payment of interest, and, in some cases, for the sale and transfer of stock; thus constituting a record for the use of the several officers of the Department who are engaged in paying interest and in the settlement of the public-debt accounts.

FIRST AUDITOR'S OFFICE.

Division of Warehouses and Bonds.

The following accounts, examined and audited in this Division, are reported to, and adjusted by, the Commissioner of Customs:

I.—Warehouse and Bond Accounts :

These are rendered by collectors and surveyors of customs, as provided by Title 34, chapter 7, and sections 2513, 2514, 3022, and 3433, of the Revised Statutes; act of June 10, 1880, (21 Stats., 173,) and Regulations of the Secretary of the Treasury relating thereto; and they comprise—

1. Account of warehouse and rewarehouse bonds.
2. Account of transportation bonds.
3. Account of export bonds.
4. Account of salt withdrawn for fisheries. (Rev. Stats., 3022.)
5. Account of materials withdrawn for construction and repair of vessels. (Rev. Stats., 2513, 2514.)
6. Account of transfers of crude articles to manufacturing warehouses for manufacture and exportation. (Rev. Stats., 3433.)

II.—Miscellaneous Accounts :

In addition to the warehouse and bond accounts, there is examined and audited in this Division a great variety of miscellaneous accounts, chiefly those which are not continuous and where each account is complete in itself. Some of these are reported to the Commissioner of Customs, and some to the First Comptroller, as indicated below :

REPORTED TO THE COMMISSIONER OF CUSTOMS.

1. Expenses of collecting the revenue from customs. (Rev. Stats., 3687, 3689.)
2. Expenses of revenue-cutter service. (Rev. Stats., 2747-2765.)
3. Marine-hospital fund. (Rev. Stats., 4801-4813.)

4. Transfers of appropriations.
5. Three months' extra pay, Revenue Marine. (20 Stats., 316.)
6. Salaries and travelling expenses, agents Seal Islands, Alaska. (Rev. Stats., 1973, 1974.)
7. Detection and prevention of frauds upon the customs revenue. (20 Stats., 386.)

REPORTED TO THE FIRST COMPTROLLER.

1. Contingent expenses of national currency.
2. Contingent expenses of national currency, reimbursable. (Act June 20, 1874, sec. 3.)
3. Contingent expenses of Independent Treasury. (Rev. Stats., 3639, 3640.)
4. Contingent expenses of Treasury Department, stationery.
5. Refunding national debt. (Act July 14, 1870, sec. 2.)
6. Outstanding liabilities. (Rev. Stats., 306.)
7. Transfers of appropriations.
8. Salaries of officers and employes, (reporters,) House of Representatives.
9. Defending suits and claims.
10. Support and medical treatment of transient paupers.
11. Judgments of Court of Claims. (Rev. Stats., 1089, 1090.)
12. Removal of Bureau of Engraving and Printing. (20 Stats., 379.)
13. Prosecution of crimes.
14. Punishing violations of intercourse acts.
15. Prosecution and collection of claims.
16. Payment of semi-annual interest to Smithsonian Institution. (Rev. Stats., 5590, 5591, 5592.)
17. Suppressing counterfeiting and fraud.
18. Also many accounts arising under special acts of Congress.

FIRST AUDITOR'S OFFICE.

Division of Miscellaneous Accounts.

Desk No. 1.

The following accounts are examined and audited quarterly at this desk, and reported for revision and settlement to the First Comptroller, except the last account in the list, which is reported to the Commissioner of Customs:

I.—Accounts of Disbursing Officers for Payment of Salaries of the several Departments at Washington, D. C., as follow:

1. Salaries, Executive Office. [This is exclusive of the President's salary.]
2. Salaries, Department of State.
3. Salaries, Treasury Department, [except the Bureau of Engraving and Printing.]
4. Salaries, War Department.

5. Salaries, Navy Department.
6. Salaries, Interior Department.
7. Salaries, Post-Office Department.
8. Salaries, Department of Justice.

II.—*Salaries of the Assistant Treasurers of the United States* at Baltimore, Md.; Boston, Mass.; Chicago, Ill.; Cincinnati, Ohio; New York, N. Y.; New Orleans, La.; San Francisco, Cal.; St. Louis, Mo.; and of the United States depository at Tucson, Ariz.

III.—*Salaries:*

1. Officers and employes, House of Representatives U. S.
2. Office of Public Printer.
3. Office of Librarian of Congress.
4. Capitol police.

IV.—*Accounts of the Coast and Geodetic Survey of the United States* for every purpose.

Salaries, office of Standard Weights and Measures.

Salaries, office of Supervising Surgeon-General of the United States Marine-Hospital Service. (Rev. Stats., 4802, 4803; 18 Stats., 377, 486.)

Desk No. 2.

The following accounts are examined and audited at this desk, and reported, with the two exceptions indicated, to the First Comptroller:

I.—*Contingent Expenses:*

1. House of Representatives.
2. Executive Departments, Washington, except Post Office and Patent Office proper.
3. Independent Treasury.
4. Public buildings and grounds.
5. Office of Public Printer.
6. National currency, reimbursable.
7. Court of Claims.
8. Library of Congress.
9. Executive Office.

II.—*Salaries:*

1. Department of Agriculture.
2. Bureau of Engraving and Printing.
3. Steamboat-Inspection Service.
4. Special agents, Independent Treasury.
5. Custodians and janitors.
6. Botanic Garden.
7. Employes, public buildings and grounds.
8. Expenses of National Board of Health. (20 Stats., 484.)
9. Director of Geological Survey. (20 Stats., 394.)
10. Salaries and expenses of National Board of Health. (20 Stats., 484.)

III.—*Rent of buildings in Washington.*

IV.—*Miscellaneous under Treasury Department:*

1. Plans for public buildings.

2. Vaults, safes, and locks for public buildings.
3. Expenses of collecting the revenue from customs. (Reported to the Commissioner of Customs.)
4. Expenses of revenue-cutter service. (Reported to the Commissioner of Customs.)
5. Expenses of detection and prevention of frauds upon the customs revenue. (Reported to the Commissioner of Customs.)
6. Suppressing counterfeiting and other crimes.
7. Lands and other property of the United States. (20 Stats., 218.)
8. Labor and expenses of engraving and printing. (18 Stats., 109, 110.)
9. Refunding national debt. (Rev. Stats., 3689.)
10. Library, Treasury Department.
11. Examination of national banks and bank-plates.
12. Storage of silver dollars.

V.—*Miscellaneous under Department of the Interior:*

1. Annual repairs of the Capitol.
2. Improving the Capitol grounds.
3. Lighting the Capitol and grounds.
4. Repairs of building, Department of Interior.
5. Stationery for Department of Interior.
6. Reconstructing building, Department of Interior.
7. Investigation of frauds, Pension Office.
8. Furniture, contingencies, and rent, Pension Office.
9. Reproducing plats of surveys, General Land Office.
10. Support of Freedmen's Hospital and Asylum.
11. Adjusting claims for indemnity for swamp lands.
12. Distributing documents, Bureau of Education.
13. Protection and improvement of Hot Springs, Arkansas. (19 Stats., 377; 20 Stats., 258.)
14. Expenses of collecting rents, Hot Springs, Arkansas.
15. Depredations on public timber.

VI.—1. Geological survey of the Territories. (20 Stats., 394.)

2. Protection and improvement of Yellowstone National Park. (Rev. Stats., 2475.)
3. Commission to classify land and codify land laws. (20 Stats., 394.)

VII.—*Miscellaneous under Department of Agriculture:*

1. Collecting agricultural statistics.
2. Experimental Garden.
3. Furniture, cases, &c.
4. Improvement of grounds.
5. Laboratory.
6. Library.
7. Museum.
8. Postage.
9. Purchase and distribution of valuable seeds.
10. Investigating diseases of swine and other domestic animals.
11. Investigating the natural history of insects injurious to agriculture.

- VIII.—1. North American ethnology, Smithsonian Institution.
 2. Propagation of food-fishes, Smithsonian Institution.
 3. Illustrations for report on food-fishes, Smithsonian Institution.
 4. Inquiry respecting food-fishes, Smithsonian Institution.
- IX.—1. Improvement and care of public grounds.
 2. Repairs, fuel, &c., Executive Mansion.
 3. Lighting, &c., Executive Mansion.
 4. Repairs of water-pipes and fire-plugs.
 5. Constructing, repairing, and maintaining bridges, D. C.
 6. Washington aqueduct.
 7. Completion of Washington Monument.
 8. Telegraph to connect the Capitol with Departments, &c.
 9. Building for State, War, and Navy Departments.
- X.—1. Prosecution of crimes, under Department of Justice.
 2. Reporting decisions of the Court of Claims.
- XI.—1. Increase of library of Congress.
 2. Improving Botanic Garden.
 3. Improving buildings, Botanic Garden.
 4. Works of art for the Capitol.
- XII.—Postage for Executive Departments.

Desk No. 3.

The following accounts are examined and audited at this desk, and reported for revision and adjustment to the First Comptroller or to the Commissioner of Customs, as hereafter classified:

REVISED BY THE FIRST COMPTROLLER.

I.—Construction of Public Buildings:

1. Court-houses.
2. Post Offices.
3. Sub-treasuries.
4. Mints.
5. Assay Offices.
6. Building for National Museum.
7. Building for Bureau of Engraving and Printing.
8. Jail for the District of Columbia.
9. Extension of the Government Printing Office.

REVISED BY THE COMMISSIONER OF CUSTOMS.

Construction of Public Buildings:

1. Custom-houses.
2. Marine hospitals.
3. Appraisers' stores.
4. Barge offices.

(Rev. Stats., 255, 355, 3597, 3663, 3684, 3733, 3734, 5504.)

For commissions on disbursements, act March 3, 1875. (18 Stats., 415; Rev. Stats., 3654.)

II.—*All Accounts relating to the Public Printing :*

REVISED BY THE FIRST COMPTROLLER.

Public printing and binding.

Fire-escape ladders, Government Printing Office.

Telephonic connection between the Capitol and Government Printing Office.

Index to official reports of the Centennial Exhibition.

Sales of waste paper, &c.

(Rev. Stats., 3756 to 3828; also the following sections of the Revised Statutes relating to the public printing not contained in the title on printing: 64, 75, 77, 78, 79, 196, 210, 263, 265, 383, 413, 489, 490, 492, 510, and 511.)

III.—*Charitable and Beneficiary Institutions of the District of Columbia and Vicinity :*

REVISED BY THE FIRST COMPTROLLER.

Current Expenses, Government Hospital for the Insane.

Buildings and grounds, Government Hospital for the Insane.

Current expenses, Columbia Institution for the Deaf and Dumb.

Buildings and grounds, Columbia Institution for the Deaf and Dumb.

Current expenses, Columbia Hospital for Women.

Buildings and Grounds, Columbia Hospital for Women.

Children's Hospital.

National Association for Colored Women and Children.

Saint Ann's Infant Asylum.

Women's Christian Association.

Industrial Home School.

Little Sisters of the Poor.

Maryland Institution for Instruction of the Blind.

Howard University.

(Rev. Stats., 4838-4869.)

IV.—*The Light-House Establishment :*

REVISED BY THE COMMISSIONER OF CUSTOMS.

Salaries of keepers of light-houses.

Supplies of light-houses.

Repairs and incidental expenses of light-houses.

Expenses of light-vessels.

Expenses of buoyage.

Expenses of fog-signals.

Inspecting lights.

Lighting and buoyage of the Mississippi, Missouri, and Ohio Rivers.

Construction of light-houses, steam-tenders, light-ships, fog-signals, and buoy depots, with a variety of accounts under special appropriations, and claims under sec. 4, act June 14, 1878. (20 Stats., 130; Rev. Stats., 3685, and 4653 to 4680.)

V.—All Accounts relating to the Life-Saving Service:**REVISED BY THE COMMISSIONER OF CUSTOMS.**

Life-Saving Service.

Life-Saving Service, contingent expenses.

Establishing life-saving stations.

Rebuilding and improving life-saving stations, and accounts under a variety of special appropriations. (Rev. Stats., 4242 to 4250; also, Chap. 265, act of June 18, 1878; 20 Stats., 163.)

VI.—Contingent Expenses of the Steamboat-Inspection Service:**REVISED BY THE FIRST COMPTROLLER.**

Travelling and incidental expenses of inspectors when on official duty, and all expenditures connected with the service, except salaries. (Rev. Stats., 4402 to 4462.)

VII.—Miscellaneous Accounts:**REVISED BY THE COMMISSIONER OF CUSTOMS.**

Fuel, lights, and water for public buildings.

Furniture and repairs of same for public buildings.

Repairs and preservation of public buildings.

Heating apparatus for public buildings.

The above for all buildings under the control of the Treasury Department.

VIII.—Miscellaneous Accounts:**REVISED BY THE FIRST COMPTROLLER.**

Refitting rooms, Post-Office Department building.

Vaults, safes, and locks for public buildings.

Furniture for new building for State, War, and Navy Departments.

Annual repairs of Treasury building.

Sinking-fund, Union and Central Pacific Railroad Companies. (20 Stats., 56.)

Interest account, Pacific Railroads. (13 Stats., 356.)

Desk No. 4.**The following-named are the classes of accounts settled at this desk:****I.—The general account of the Treasurer of the United States for receipts and expenditures.**

1. In this account the Treasurer is charged with all warrants drawn by the Secretary of the Treasury, covering into the Treasury all moneys received from specific and miscellaneous sources. (Rev. Stats., 305.)
2. The Treasurer is credited by all warrants drawn on him by the Secretary of the Treasury for the payment of all moneys for the support of the Government, and all claims arising thereunder, appropriated by acts of Congress. (Rev. Stats., 3675.)
3. Pay warrants are paid upon drafts issued by the Treasurer in favor of the payee, and he is not allowed credit therefor unless said drafts are indorsed by the payee, or his properly-authorized attorney, administrator, &c.

4. This account is rendered quarterly, audited, and transmitted to the First Comptroller for his decision thereon. (Rev. Stats., 277, part 1.)

II.—Accounts of the Treasurer of the United States, as disbursing agent, for paying the salaries and mileage of Members of and Delegates to the House of Representatives. (Rev. Stats., 39, 46.)

III.—Accounts of the Secretary of the United States Senate, as disbursing agent, for the compensation of Members and officers, and for the contingent expenses of the Senate. (Rev. Stats., 56.)

1. Salaries of officers and employ es receiving an annual compensation. (Rev. Stats., 52, 53.)
2. Contingent expenses. (Rev. Stats., 76.)

Desk No. 5.

The accounts examined and audited at this desk are :

I.—ACCOUNTS OF MINTS AND ASSAY OFFICES:

These accounts are rendered, either monthly or quarterly, to the Director of the Mint by the superintendents or assayers in charge, as provided in section 3504 of the Revised Statutes, and are referred by the Director to the First Auditor for examination and settlement. They are: (1.) Gold and silver bullion account; (2.) Ordinary expense account; (3.) Parting and refining expense account; (4.) Coinage of the standard silver dollar; (5.) Manufacture of medals; (6.) Expenses of collecting mining statistics; (7.) Freight on bullion and coin; (8.) Assays and chemical examination of ores; (9.) Sales of old material.

1. *The Gold and Silver Bullion Accounts* are rendered quarterly by the superintendents of the United States assay office at New York and of the various mints, and show: (1.) The weight, fineness, value, and disposition made of bullion received under sections 3519 and 3520 of the Revised Statutes; (2.) The charges and deductions upon deposits, as provided in sections 3506 and 3524; (3.) The loss and wastage of bullion by the operative officers, subject to the limitations of section 3542 of the Revised Statutes; (4.) The payment to depositors, in coin or bars, of the net value of the deposits (see sections 3544, 3545); (5.) The depositing in the Treasury, as provided by section 3552, of the moneys arising from charges and deductions on and from gold and silver bullion.

When rendered by mint superintendents these accounts further show: (1.) The purchase of bullion for coinage, as authorized in section 3526 of the Revised Statutes and section 1 of the act of February 28, 1878 (20 Stats., 25); (2.) The manufacture of ingots and coins, as per sections 3506 and 3509 of the Revised Statutes; (3.) The expense of coinage distribution, as per section 3526.

The accounts by the assayer in charge of the mint at Denver, or of assay offices other than that at New York, show the receipt and assaying of bullion as provided in section 3558, and the return of the same to the depositors or payment in coin. (Rev. Stats., 3545; 20 Stats., 191.)

In all instances the bullion accounts state the amount and value of the coin and bullion, both gold and silver, in the respective mints and assay offices at the close of the period for which they are rendered.

Under the title "The gold and silver-bullion and minor-coinage account of the superintendent of the mint of the United States at Philadelphia," is included an account of the receipts and expenditures attending the minor coinage, which shows: (1.) The purchase of metal for coinage, section 3528 of the Revised Statutes; (2.) The manufacture of planchets and coins, (section 3515,) with the transfer of the resulting profits to the Treasury, as provided by section 3528; (3.) The distribution of the coin under section 3529, and the expense attending the same.

2. *Ordinary Expense Accounts.*—These accounts are rendered monthly. They comprise payment for salaries of officers and clerks, wages of workmen, and the incidental and contingent expenses of the various mints and assay offices. (Rev. Stats., 3504; Mint Regulations, p. 22.)
3. *Parting and Refining Expense Accounts.*—These accounts are for the wages of the workmen employed, and the contingent expenses incurred in the operations attending parting and refining bullion; and they are rendered monthly. (See acts of June 19, 1878; 20 Stats., 191; and of June 15, 1880; 21 Stats., 223.)
4. *Accounts for the Coinage of the Standard Silver Dollar.*—These accounts are for expenses attending the coinage of the standard silver dollar; as wages of workmen and incidental expenses. They are rendered monthly. (20 Stats., 25.)
5. *Accounts for the Manufacture of Medals.*—These accounts are for the receipts and expenditures attending the manufacture and sale of medals at the Philadelphia mint, and are rendered quarterly. The profits accruing from sales, and all medal charges, are covered into the Treasury. (Rev. Stats., 3552; Mint Regulations, pp. 14, 15.)
6. *Accounts for Collecting Statistics of the Precious Metals in the United States.*—These accounts are for the expenses attending the collection of statistics relating to the annual production of the precious metals in the United States, and are rendered monthly. (21 Stats., 266, 441.)
7. *Accounts for Freight on Bullion and Coin.*—These accounts are for transportation of bullion and coin between the mints and assay offices, (21 Stats., 223,) and are paid directly from the Treasury on special accounts.
8. *Accounts for Assays and Chemical Examination of Ores.*—These are for moneys received on account of assays and chemical examinations made in pursuance of section 3507 of the Revised Statutes.
9. *Accounts for Sales of Old Material.*—In these the superintendent, or other officer in charge, accounts for the proceeds of old material sold. (Rev. Stats., 3618.)

II.—TERRITORIAL ACCOUNTS. (Rendered semi-annually.)

1. *Legislative Expenses Accounts.*—These are accounts of Territorial secretaries for *per diem* and mileage of members of each branch of the several Territorial legislatures, and *per diem* of the officers thereof; for incidental expenses of the legislatures, such as rent of halls, committee-rooms, fuel, furniture, stationery, printing, &c.; for incidental expenses of the Secretary's office, such as office-rent, furniture, stationery, fuel, &c. (Rev. Stats., 1843, 1844, 1846, 1852, 1853, 1854, 1861, 1878, 1886, 1888, 1939, 1940, 1942, 1943; 20 Stats., 193, 194.)

2. *Contingent Expenses Accounts*.—These are accounts of Territorial Governors for contingent expenses of the executive offices, such as pay of clerks, fuel, rent, light, &c. (Rev. Stats., 1841, 1935, 1938; 21 Stats., 225, 226.)
3. *Accounts for Salary of Interpreter and Translator* in the executive office. (21 Stats., 225.)
4. *Accounts for Expenses of Boards of Apportionment*, for the *per diem* and mileage allowed to the members of the boards for reapportionment of legislative districts, certified by the secretaries of Territories to the First Auditor. (Rev. Stats., 1849; 21 Stats., 154.)

III.—ACCOUNTS FOR SALARIES:

These accounts are for the salaries of civil officers of the United States, and are paid either monthly or quarterly, on the First Auditor's certificate, directly from the Treasury. They embrace the salaries of the (1) Vice-President, paid monthly (Rev. Stats., 154; 18 Stats., 89); (2) Chief and Associate Justices of the Supreme Court of the United States, paid monthly (Rev. Stats., 673, 676); (3) United States circuit justices, paid quarterly (Rev. Stats., 607); (4) United States district judges, paid quarterly (Rev. Stats., 551, 554); (5) chief and associate justices of the supreme court of the District of Columbia, paid quarterly (Rev. Stats. relating to District of Columbia, sections 750, 751, 752; 20 Stats, 320, 321); (6) Retired United States judges, paid quarterly (Rev. Stats., 714; 21 Stats., 235); (7) Chief Justice, judges, and employes of the Court of Claims, paid monthly (Rev. Stats., 1049, 1053, 1054); (8) marshal of the Supreme Court of the United States, paid quarterly (Rev. Stats., 677, 680; 19 Stats., 318); (9) district attorneys of the United States, paid quarterly (Rev. Stats., 767, 769, 770, 1880); (10) marshals of the United States, paid quarterly (Rev. Stats., 776, 779, 781, 1881); (11) Governors of Territories, paid quarterly (Rev. Stats., 1841, 1877, 1878, 1882, 1884, 1941; 19 Stats., 308); (12) secretaries of Territories, paid quarterly (Rev. Stats., 1843, 1877, 1878, 1882, 1884, 1941; 19 Stats, 308); (13) chief justices and associate justices of the Territories, paid quarterly (Rev. Stats., 1877, 1879, 1882).

IV.—ACCOUNTS FOR DEFENDING SUITS IN CLAIMS AGAINST THE UNITED STATES:

These are the accounts of the disbursing clerk of the Department of Justice, rendered quarterly, with the approval of the Attorney-General, for the payment of the necessary expenses incurred in the examination of witnesses in claims against the United States pending in any Department, and in defending suits in the Court of Claims. (21 Stats., 277.)

V.—EXAMINATION OF REBEL ARCHIVES AND RECORDS OF CAPTURED PROPERTY:

These are the accounts of the disbursing clerk of the Treasury Department, rendered quarterly, approved by the Secretary of the Treasury, for payment of the expenses of having the records of captured and abandoned property examined for the use of the Government. (21 Stats., 266.)

VI.—CONTINGENT EXPENSES, INDEPENDENT TREASURY, for the transportation of notes, bonds, and other securities of the United States. (21 Stats., 223.)

VII.—CONTINGENT EXPENSES, NATIONAL CURRENCY, reimbursable, Treasurer's office, for the transportation of national-bank notes, redemption account. (Section 3 of the act of June 20, 1874; 18 Stats., 123, 124.)

VIII.—In addition to the regular accounts above enumerated, there are numerous special accounts relating to the mint service which are referred to this office for examination and settlement by the Director of the Mint. (Rev. Stats., 3552; Mint Regulations, p. 21.)

All requisitions for advances of funds to the officers in charge of the various mints and assay offices, the secretaries of the Territories, and other disbursing agents, are prepared for transmittal to the First Comptroller.

Desk No. 6.

In pursuance of section 4 of the act approved June 11, 1878 (20 Stats., 102), providing a permanent form of government for the District of Columbia, the following accounts are rendered to the First Auditor of the Treasury, by whom they are, after examination and statement, transmitted to the First Comptroller of the Treasury for his decision thereon:

FOR DISBURSEMENTS MADE BY THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA, on account of—

1. Improvements and repairs, comprising—
 - a. Repairs to concrete pavements.
 - b. Intercepting and auxiliary sewers.
 - c. Replacement of pavements.
 - d. Materials for permit work, &c.
2. Constructing, repairing, and maintaining bridges.
3. Washington Asylum.
4. Georgetown Almshouse.
5. Transportation of paupers and conveying prisoners.
6. Support of indigent insane of the District.
7. Reform School.
8. Relief of the poor.
9. Salaries and contingent expenses, offices District of Columbia.

This latter account covers expenditures for—

- a. Executive office.
- b. Auditor and Comptroller's office.
- c. Old records division.
- d. Special-assessment division.
- e. Treasurer and assessor's office.
- f. Collector's office.
- g. Sinking-fund office.
- h. Coroner's office.
- i. Attorney's office.
- j. Office of inspector of buildings.
- k. Division of property office.
- l. Division of streets, alleys, and county roads.
- m. Office of inspector of gas and meters.
- n. Harbor-master and sealer of weights and measures.
- o. Engineer's office.
- p. Miscellaneous expenses, District officers.

10. Public schools.
11. Metropolitan police.
12. Fire department.
13. Courts.

This latter account covers expenditures for—

- a. Police court and
- b. Judicial expenses.

14. Markets.

15. Streets.

This latter account covers expenditures for—

- a. Removal of garbage.
- b. Sweeping, cleaning, and sprinkling streets, &c.
- c. Cleaning alleys.
- d. Current work of repairs of streets, alleys, &c.
- e. Parking commission.
- f. Street-lamps, and gas.
- g. Repairs to pumps.
- h. Cleaning tidal sewers.

16. Health department.

17. Judgments.

18. Miscellaneous and contingent expenses ;

Which cover expenditures for—

- a. Hay scales.
- b. Rent of District offices.
- c. General advertising.
- d. Books for register of wills, &c.

⁹ The above-mentioned accounts cover disbursements made for the general expenses of the District.

Accounts are also rendered by the Commissioners for disbursements made for special purposes, as follow:

1. Refunding taxes.
2. Redemption of tax-lien certificates.
3. Washington special-tax fund.
4. Washington redemption fund.
5. Redemption of Pennsylvania avenue paving scrip.
6. Redemption of Pennsylvania avenue paving certificates.
7. Water department.
8. Filling up grounds south of the Capitol.
9. Penny-lunch house.
10. The account of the collector of taxes for the District of Columbia; which is—
 - a. For revenue collected on real and personal property, and from other sources; and
 - b. For water-rents and taxes.
11. The accounts of the treasurer of the District of Columbia, being—
 - a. For moneys received from the collector of taxes, and from other sources; and
 - b. For receipts on account of water department.

11. Also, an annual account between the United States and the District of Columbia, showing the amounts appropriated out of the United States Treasury; the amount of revenue collected and deposited in the United States Treasury; and the amounts advanced on warrants to all parties and charged to the District of Columbia.

CHAPTER III.

ACCOUNTS EXAMINED AND AUDITED IN THE OFFICE OF THE FIFTH AUDITOR OF THE TREASURY.

All accounts examined and stated in this office are transmitted to the First Comptroller for re-examination and final settlement.

FIFTH AUDITOR'S OFFICE.

Diplomatic and Consular Division.

The following-named accounts are examined and audited in this Division:

I.—*Accounts for the Salaries of Diplomatic Officers :*

Including envoys extraordinary and ministers plenipotentiary; ministers resident; commissioners; chargés d'affaires; agents; and secretaries of legation. (The present number of diplomatic officers of the United States is 46. Rev. Stats., 1674, 1688.)

II.—*Contingent Expenses of United States Legations :*

Including rent, postage, stationery, and such other incidental expenditures as are approved by the Secretary of State. (Rev. Stats., 1748, 1752.)

III.—*Salaries of Interpreters to United States Legations :*

In China, Japan, and Turkey. (Rev. Stats., 1678, 1679, 1680.)

IV.—*Salaries and Compensation of Consular Officers :*

(The present number of consular officers is 878, and of consular clerks 13.)

1. Salaries of consuls-general, vice-consuls general, consuls, vice-consuls, commercial agents, and vice-commercial agents, who receive fixed salaries under annual appropriations. (Rev. Stats., 1690, 1703, 1740, 1741, 1742, 1743, 1744.)

2. Compensation of consuls, vice-consuls, commercial agents, and vice-commercial agents, derived from fees. (Rev. Stats., 1730, 1732.)

3. Compensation of consular agents derived from fees. (Rev. Stats., 1733.)

4. Salaries of United States consular clerks. (Rev. Stats., 1704, 1705; sec. 5 of the act of June 11, 1874; 18 Stats., 70.)

5. Salaries of interpreters to consulates in China, Japan, Siam, and Turkish Dominions. (Rev. Stats., 1692, 1693; also secs. 3, 4, 5, and 6 of the act of June 11, 1874; 18 Stats., 70.)

6. Salaries of marshals to consular courts in China, Japan, Siam, and Turkey. (Rev. Stats., 4111, 4112, 4113.)

V.—Incidental Expenses of Consulates:

1. Contingent expenses, including office-rent, postage, stationery, and such other incidental expenses as may be approved by the Secretary of State. (Rev. Stats., 1706, 1748, 1752.)
2. Allowance for clerk-hire. (Section 2 of the act of June 11, 1874; 18 Stats., 70.)

Since the original act above referred to, authorizing the allowance of clerk-hire at certain consulates, some changes have been made from year to year in the annual appropriation bills.

3. Rent of prisons for American convicts, wages of keepers, &c., in China, Japan, Siam, and Turkey. (Rev. Stats., 4121.)
4. Expenses of shipping and discharging seamen at Liverpool, London, Cardiff, Belfast, and Hamburg. (Act June 4, 1878; 20 Stats., 97.)
5. Loss by exchange on consular service. (Annually appropriated for since 1856.)

VI.—Accounts relating to American Seamen:

1. For relief of destitute American seamen abroad. (Rev. Stats., 4577–4584.)
2. For passage of destitute American seamen to the United States. (Rev. Stats., 4578, 4579.)
3. For rescuing from shipwreck seamen or citizens of the United States by masters and crews of foreign vessels. (11 Stats., 28; annually appropriated for.)
4. For bringing home from foreign countries seamen and other persons charged with crime. (Annually appropriated for.)
5. For marine-hospital dues collected by consular officers. (Rev. Stats., 4585.)

VII.—Accounts of Disbursing Officers:

1. United States bankers at London, for salaries of United States ministers; contingent expenses of foreign missions; salaries of secretaries of legation; salaries of consular service; surplus fees deposited by consular officers; relief and protection of American seamen; expenses of interpreters, guards, &c., in Turkish Dominions; allowance to widows and heirs of diplomatic officers who die abroad; expenses of Cape Spartel light; Berlin Fishery Commission; International Bureau of Weights and Measures; Scheldt dues; International Bi-metallic Commission; Tribunal of Arbitration at Geneva; International Exposition at Vienna; International Exposition at Paris; International Exhibitions at Sydney and Melbourne; International Prison Congress at Stockholm; International Bureau of Weights and Measures.
2. Disbursing clerk of the State Department, embracing all accounts of disbursements in relation to foreign intercourse, as well as proof-reading, &c.; stationery, furniture, &c.; books and maps; lithographing, editing, publishing, and distributing Revised and Annual Statutes; postage-stamps for the Executive Departments.
3. Disbursing clerk, Interior Department, embracing accounts of disbursements for contingent expenses of the office of the Commissioner of Patents; photo-lithographing plates for Patent-Office Gazette; for copies of drawings; for tracings of drawings; expenses of packing and distributing official documents; preservation of collections for the Smithsonian Institution; additional security against fire in the Smith-

sonian Institution; scientific library in the office of the Commissioner of Patents; publishing the Biennial Register; expenses of the Tenth Census; transportation of agents (Census) over Pacific Railroads.

4. Disbursing clerk of the Post-Office Department, embracing the contingent expenses of the Post-Office Department: For telegraphing, gas, furniture, stationery, hardware, carpets, rent of buildings, keeping of horses and repair of wagons and harness, plumbing and gas-fixtures, painting, fuel, publication of Official Postal Guide, Post-Office Directories, and miscellaneous items. •

•VIII.—*Accounts arising under Treaties and Conventions:*

Such as salaries and contingent expenses of the Tribunal of Arbitration at Geneva; of the Joint High Commission at Washington; of the Court of Alabama Claims, and awards made thereby; of Mixed Commission on British and American Claims.

Quarterly accounts are now adjusted for salaries and contingent expenses of the United States and Spanish Commission (treaty published in 16 Stats., 720, and annual appropriations made since); for salaries and expenses of Joint Commission between the United States and the French Republic, (under the Convention of January 15, 1880, and act approved June 16, 1880; 21 Stats., 296.)

FIFTH AUDITOR'S OFFICE.

Internal-Revenue Collectors' Division.

In this Division the following accounts are examined and audited:

- I.—*Revenue Accounts of Collectors of Internal Revenue*, in which they are charged with (a) lists of taxes; (b) stamps of various kinds furnished them; (c) taxes and stamps received from other collectors; (d) penalties, forfeitures, and excesses in collections on stamps. They are credited with payments of cash; abatements of taxes erroneously assessed; with unused stamps and coupons returned; with taxes and stamps transferred to other collectors; with errors and duplicate charges on assessment lists; and with taxes for which property has been sold and bid in for the United States. (Rev. Stats., 3218, 3220, 3314.)
- II.—*Disbursing Accounts of Collectors of Internal Revenue*, involving salaries of collectors; compensation of deputy collectors; stationery and postage of collectors; compensation of storekeepers; rent of office; fuel and lights of collectors' offices; and expenses incurred by collectors in making surveys of distilleries. (Rev. Stats., 3145, 3148, amended by sec. 2, act March 1, 1879; 20 Stats. 327, 3153, 3264.)

FIFTH AUDITOR'S OFFICE.

Division of Miscellaneous Internal-Revenue Accounts.

The accounts examined and audited in this Division may be classified as follows:

1. Accounts for the manufacture of paper; printing of internal-revenue stamps for distilled spirits, beer, tobacco, snuff, cigars; special-tax stamps; adhesive stamps, &c.

2. Accounts of the Commissioner of Internal Revenue for the receipt and delivery of all internal-revenue stamps, stamped-foil wrappers, and stamped-paper labels.
3. Quarterly accounts of stamp agents.
4. Claims for stamps returned for redemption, &c. (Rev. Stats., 3426 and 3689, as amended by the act of March 1, 1879; 20 Stats., 327.)
5. The accounts of internal-revenue agents; surveyors of distilleries; United States district attorneys, for professional services and expenses in internal-revenue proceedings; and all miscellaneous accounts, including salaries and expenses, travelling expenses, telegrams, rent, stationery, expressage, &c.
6. The accounts of collectors of internal revenue for suppressing illicit distillation, and of claimants for information and rewards.
7. Claims for the refunding of taxes; for drawbacks on merchandise exported; and all private acts of Congress pertaining to internal-revenue matters. (Rev. Stats., 3386, 3441, as amended by the act of March 1, 1879, and the act of May 28, 1880; and Rev. Stats., 3689.)
8. The adjustment of the final accounts of assessors of internal revenue and of "United States direct-tax commissioners." (Act of June 7, 1862; 12 Stats., 422; act of August 5, 1861, *Id.*, 294.)
9. The accounts of the Secretary of the Treasury relating to "fines, penalties, and forfeitures," and for moneys deposited to his credit pending offers of compromise. (Rev. Stats., 3229, 3469.)
10. The accounts of the disbursing clerk of the Treasury Department for the salaries of the employes of the Office of Internal Revenue; for fees and expenses of gaugers; for payments made from the appropriation for the "punishment for violation of the internal-revenue laws," and from that for "stamps, paper, and dies." (Rev. Stats., Title xxxv.)
11. The accounts of the South Carolina free-school fund commissioners for payment to teachers, repairs of school-houses, &c. (Sec. 6, act of June 8, 1872.)
12. Claims for compensation for lands ceded by the United States to Great Britain under the Treaty of Washington, dated August 9, 1842.

CHAPTER IV.

ACCOUNTS EXAMINED AND AUDITED IN THE GENERAL LAND OFFICE.

General Land Office.

The accounts relating to the public lands are examined and audited by the Commissioner of the General Land Office, and by him transmitted to the First Comptroller of the Treasury for his decision thereon. (Rev. Stats., 456.)

These accounts may be classified thus:

- I.—*Accounts of Receivers of Public Moneys*, embracing an examination into, respectively—
 1. Their appointment and bonds as receivers; places of residence; terms of office; salaries, fees, and commissions; limit of compensation; dispo-

sition of fees and commissions in excess of maximum; office expenses and clerk-hire of consolidated land-offices; beginning of compensation; and payment of receipts into the Treasury. The accounts are rendered monthly and quarterly. (Rev. Stats., 2234-2237, 2238, as amended by the act of December 17, 1880; 2239 to 2244, 2255, 3617, 3622.)

2. Their accounts as disbursing agents, involving an examination into matters stated above, together with their bonds as disbursing agents, and the advances of public money to them for disbursement. (Rev. Stats., 2234, 2235, 2237, 2238, as amended by the act of December 17, 1880; 2239, 2240, 2241, 2243, 3614, 3620, 3622, 3623, 3639, 3648.)

II.—*Accounts of Surveyors-General*, embracing—

1. Inspection of surveys in the field. (Rev. Stats., 2223.)
2. Accounts of deputy surveyors, their appointment, bonds, contracts for surveys, and cost of surveys. (Rev. Stats., 2223, 2230, 2398, 2400, 2404, 2405, 2407, 3411.)
3. Accounts as disbursing agents; their appointment, terms of office, bonds, salaries, clerk-hire, office-rent, and incidental expenses. (Rev. Stats., 2207, 2208, 2210, 2211, 2215, 2217, 2226, 2227, 3620, 3622, 3623, 3639, 3648.)

III.—*Accounts of States*.—These accounts embrace the payment, to the States, of two, three, or five per centum of the net proceeds of the sales of public lands within their boundaries, under the organic acts. (Rev. Stats., 3689.)

IV.—*Miscellaneous Accounts*, including—

1. Accounts for refunding money for lands erroneously sold. (Rev. Stats., 3689, as amended by the act of June 16, 1880.)
2. Accounts for indemnity for swamp-lands for States. (*Id.*)
3. Accounts for deposits by individuals for surveying the public lands. (Rev. Stats., 2401, 2402, 3689.)
4. Accounts for five per centum of the net proceeds of the sales of Indian lands to States of Kansas, Minnesota, and Nebraska. (5th clause of act of February 26, 1857; 11 Stats., 66; 5th clause of 3d section of act of January 29, 1861; 12 Stats., 126; act of April 10, 1876; 19 Stats., 28.)
5. Accounts of special disbursing agents other than receivers of public moneys and surveyors-general. (Rev. Stats., 3614.)
6. Railway accounts for transportation over subsidized railroads. (Rev. Stats., 5260, and 2d section act of May 7, 1878; 20 Stats., 56.)
7. Accounts with express companies for transportation of public moneys from land-offices to United States depositories, under contract with the Treasury Department. (Rev. Stats., 2245.)
8. Accounts of registers and receivers, and of special agents acting as timber agents. (Act of June 3, 1878; 20 Stats., 88.)

CHAPTER V.

ACCOUNTS EXAMINED AND ADJUSTED IN THE OFFICE OF THE SECOND COMPTROLLER OF THE TREASURY.

The act of Congress of March 3, 1817, (3 Stats., 366,) abolished the offices of accountant and additional accountant of the Department of War, the office of accountant of the Navy, and the office of superintendent-general of military supplies; and it enacted that "all claims and demands whatever, by the United States or against them, and all accounts whatever, in which the United States are concerned, either as debtors or as creditors, shall be settled and adjusted in the Treasury Department." (Rev. Stats., 236.) It also made an addition of four Auditors and one Comptroller to the accounting officers in the Treasury Department already established by law, and prescribed the duties of such additional officers. (Rev. Stats., 273–277.)

The general duties of the Second Comptroller are as follow:

(1.) To examine all accounts settled by the Second, Third, and Fourth Auditors, and certify the balances arising thereon to the Secretary of the Department in which the expenditure has been incurred. (Rev. Stats., 273.) Balances certified by the Second Comptroller for payment from the Treasury are paid on warrants issued by the Secretary of the Treasury (Rev. Stats., 248) and countersigned by the First Comptroller (Rev. Stats., 269), who is required to ascertain that they are "warranted by law." On questions of law this requirement gives the First Comptroller a supervisory jurisdiction. (Bender's case, *ante*, 317, 391.)

(2.) To countersign all requisitions drawn by the Secretaries of War and of the Navy, which shall be warranted by law. (Rev. Stats., 273, 3673.)

(3.) To countersign all requisitions drawn by the Secretary of the Interior, which shall be warranted by law, relative to Indians and pensions. Prior to the establishment of the Department of the Interior (March 3, 1849; 9 Stats., 395), the Secretary of War was charged with the supervision of business relating to Indians and pensions, and the Second Comptroller was in terms, as he still is, required by statute to countersign all legally-warranted requisitions of the Secretary of War. The transfer of the Indian and pension business to the Interior Department made no change in the adjustment of accounts pertaining

to such business. The accounts continued to be settled by the Second and Third Auditors, respectively, and by the Second Comptroller. Hence, the duty of countersigning requisitions on Indian and pension accounts continued to be exercised by the last-named officer, although since March 3, 1849, the requisitions have been drawn by the Secretary of the Interior, and not by the Secretary of War. (Rev. Stats., 444.)

(4.) The Second Comptroller may prescribe rules to govern the payment of arrears of pay due to any petty officer, seaman, or other person not an officer, on board any vessel in the employ of the United States which has been sunk or destroyed, in case of the death of such petty officer, seaman, or other person, to the person designated by law to receive the same. (Rev. Stats., 274.)

(5.) Whenever any officer employed in the military, naval, Indian, or pension service of the Government, to disburse public money, fails to render his accounts, or to pay over, as required by law or regulations, any public money in his hands, it is made the duty of the Second Comptroller to cause to be stated and certified the account of such delinquent officer to the Solicitor of the Treasury, in order that suit for the recovery of the amount may be instituted. (Rev. Stats., 3633.) The practice of issuing warrants of distress against delinquent officers (Rev. Stats., 3625–3638) was discontinued many years ago.

There are in the office of the Second Comptroller six Divisions, to which are assigned for examination the accounts received from the Auditors:

I.—Division of Army Accounts:

In this Division are adjusted accounts received from the Second Auditor, pertaining to the following-named expenses:

1. Pay of the Army.
2. Bounties and back pay.
3. Ordnance Department of the Army.
4. Medical Department.
5. National Homes for Disabled Volunteer Soldiers.

II.—Division of Indian Accounts:

Received from the Second Auditor:

1. Pay of Indian agents, superintendents, and interpreters.
2. Expenses of fulfilling treaties with the various tribes.
3. Removal, settlement, and support of Indians.
4. Incidental expenses.
5. General and miscellaneous expenses.
6. Payment of interest on trust funds.

III.—*Division of Quartermasters' and Commissaries' Accounts:*

Received from the Third Auditor:

1. Expenses of barracks and quarters, hospitals, storehouses, offices, stables, transportation of Army supplies, purchase of clothing, equipage, horses, fuel, forage, bedding, stationery, and all expenses not assigned to any other department incident to the operations of the Army.
2. Subsistence of the Army.
3. Construction and repair of fortifications.
4. Improvement of harbors and rivers.
5. Expenses of the Signal Service.
6. Expenses of the Military Academy at West Point.

IV.—*Division of Miscellaneous Claims:*

Received from the Third Auditor:

1. Claims growing out of the appropriation by troops of supplies for the Army.
2. Claims growing out of the appropriation and use by troops of means of transportation of the Army by boats, railroads, horses, wagons, &c.

The above-mentioned are only a few of the numerous sorts of claims passed upon in this Division.

V.—*Division of Naval Accounts:*

Received from the Fourth Auditor:

1. Accounts of paymasters of naval vessels and receiving-ships at navy-yards and naval stations.
2. Accounts of naval officers employed in the Coast Survey and on the Fish Commission.
3. Accounts for pay and expenses of the Marine Corps.
4. Accounts for the distribution of prize-money awarded to the officers and men of the Navy.
5. Accounts for purchase of supplies for the Navy at home and abroad.
6. Accounts of naval officers, other than disbursing officers, who are charged with the receipt of public money.
7. Accounts for payment of Navy pensions.
8. Accounts for payment of bounties and arrears of pay.
9. Miscellaneous claims.

The duties above enumerated constitute the principal work and show the general character of the business transacted in the office of the Second Comptroller. For additional particulars reference is made to the chapters which describe the work done in the offices of the Second, Third, and Fourth Auditors, all of which is re-examined and revised in this office.

CHAPTER VI.

ACCOUNTS EXAMINED AND AUDITED IN THE OFFICE OF THE SECOND AUDITOR OF THE TREASURY.

The classes of accounts and claims examined and audited, the requisitions issued, and miscellaneous work performed in this office are distributed as follows:

Book-keeper's Division.

The necessary journal and ledger records of the accounts of disbursing officers, which are examined by the Second Auditor, claims for Indian goods and supplies, and miscellaneous claims payable from appropriations on the books of this office, are kept in this Division. There are five sets of journals and ledgers, with appropriate indexes, namely:

1. One set for the accounts of Army paymasters.
2. One set for other disbursing officers of the War Department, and miscellaneous accounts and claims.
3. One set for the accounts of Indian agents.
4. One set for the appropriations of the War Department.
5. One set for Indian appropriations.

Requisition-books (two debit and two credit), in which are recorded all requisitions issued by the Secretary of War and the Secretary of the Interior that are registered in this office, are kept.

Appropriation-warrant books (two), in which are recorded all appropriation warrants issued by the Secretary of the Treasury, pertaining to this office, are kept.

(The requisition and warrant books take the place of ordinary journals to sets Nos. 4 and 5.)

The accounts of the following disbursing officers are examined and audited in this office, and, after being revised and certified by the Second Comptroller, are filed in this office. The settlements which arise thereon are recorded, journalized, and posted in this Division:

54 Paymasters of the Army.

26 Recruiting officers.

21 Ordnance officers.

24 Officers disbursing sundry appropriations of the War Department.

81 Indian agents and others, making disbursements on account of the Indian Service.

Pay and Bounty Division.

Claims for bounty to soldiers in the late war and their heirs, for arrears of pay, use and risk of horse, travel pay, three months' extra pay, extra-duty pay, commutation of clothing, and other allowances to officers and soldiers in the regular and volunteer Army from the year 1817 to the present time, and to their heirs, as well as claims for amounts due from enlisted men to sutlers and laundresses, are examined and audited in this Division. (Rev. Stats., 1288, 2032, 2037, 3689, 4723.)

Paymaster's Division.

All accounts of Army paymasters, claims for longevity pay and for commutation of quarters to Army officers now in service, and accounts in favor of the Soldiers' Home, are examined and audited in this Division. Special settlements in cases of over-payment to officers or soldiers, are also made in this Division. (Rev. Stats., 280, 281, 1059 (third), 1062, 1094, 1182–1194, 1261, 1292, 1305–1307, 3639, 4819.)

Indian Division.

The accounts of all disbursements for the Indian service, including cash and property accounts of Indian agents, and claims for goods supplied and services rendered to the Indian Bureau, are examined and audited in this Division. (Rev. Stats., 462–469, 1066, 1094, 1112, 1276, 1949, 2039–2157, 2283–2285, 2310–2316, 3689.)

Division of Frauds, Correspondence, and Records.

Cases of alleged forgery, fraud, over-payments, unlawful withholding of money in the payment of officers and soldiers of the Army, are investigated by this Division; in which also are registered all accounts, claims, additional evidence, letters, &c., received in the office, and replies to inquiries from claimants in regard to claims for pay and bounty.

Ordnance, Medical, and Miscellaneous Division.

All cash accounts of the Ordnance Department, Medical Department, accounts of recruiting officers, National Home for Disabled Volunteer Soldiers, contingent expenses of the War Department, claims for local bounty, claims under special act of Congress, and all claims of a miscellaneous character, not pertaining to other Divisions of the office, are examined and audited in this Division; in which also are recorded all payments to officers in the regular and Volunteer Army. (Rev. Stats., 1094, 1120, 1159–1161, 1164–1168, 1271, 1287, 1304, 1662–1664, 1672, 1673, 1764, 1895, 2032, 2035, 2036, 3480, 3489, 3618, 3689, 5337.)

Property Division.

Accounts of Army officers for clothing, camp and garrison equipage, are examined and adjusted in this Division. (Rev. Stats., 225, 1221, 1221; act June 23, 1870; Joi. Res., March 29, 1867.)

Inquiries and Replies Division.

Inquiries from the War Department, Pension Office, Third Auditor's, and other offices, requesting record of payment on any account to Army officers and soldiers, verification of signatures, and all other miscellaneous information requiring reference to the Army pay-rolls, or to claims for pay and bounty filed in the office, are answered in this division. Copies of rolls, vouchers, &c., required for use in other offices, or to replace those in this office which have become unfit for reference, are made in this Division.

Archives Division.

All the files of the office, comprising the settled accounts of paymasters, (in which are included the pay-rolls of the volunteer and regular Army), of the disbursing officers of the Indian Department, Ordnance Department, Medical Department, of recruiting officers, and all miscellaneous accounts settled by this office, are in charge of this Division. (Rev. Stats., 283.)

CHAPTER VII.

ACCOUNTS EXAMINED AND AUDITED IN THE OFFICE OF THE THIRD AUDITOR OF THE TREASURY.

Section 277 of the Revised Statutes provides that—

“The Third Auditor shall receive and examine all accounts relative to the subsistence of the Army, the Quartermaster's Department, and generally all accounts of the War Department other than those provided for; all accounts relating to pensions for the Army, and all accounts for compensation for the loss of horses and equipments of officers and enlisted men in the military service of the United States, and for the loss of horses and equipments, or of steamboats, and all other means of transportation, in the service of the United States by contract or impressment; and, after the examination of such accounts, he shall certify the balances and shall transmit such accounts, with all the vouchers and papers and the certificate, to the Second Comptroller for his decision thereon.”

Section 283, Revised Statutes, provides that the Third Auditor "shall receive from the Second Comptroller the accounts" of the War Department "which shall have been finally adjusted, and shall preserve such accounts, with their vouchers and certificates, and record all requisitions drawn by the" Secretary of War, the examination of the accounts of which has been assigned to him.

The work of the office of the Third Auditor is distributed as follows:

I.—Book-keeper's Division:

In this Division are kept the records of appropriation accounts, and of repayments made through this office into the Treasury, including requisitions drawn by the Secretaries of War and of the Interior, in favor of regular disbursing officers and others to whom the United States is indebted. The different classes of requisitions which pass through this Division are:

1. Regular supplies, Quartermaster's Department.
2. Incidental expenses, Quartermaster's Department.
3. Barracks and quarters, Quartermaster's Department.
4. Army transportation.
5. Clothing, camp and garrison equipage.
6. National cemeteries.
7. Pay of superintendents of national cemeteries.
8. Construction and repair of hospitals.
9. Observation and report of storms.
10. Claims for quartermasters' stores and commissary supplies. (Act July 4, 1864.)
11. Cavalry and artillery horses.
12. Miscellaneous claims audited by Third Auditor.
13. Constructing jetties, &c., at South Pass, Mississippi River.
14. Repair of road between Fortress Monroe and Mill Creek.
15. Telegraphic-cable from main-land in Rhode Island to Block Island.
16. Fifty per cent. arrears of Army transportation due land-grant railroads. (Act March 3, 1879.)
17. Claims of loyal citizens for supplies furnished, &c.
18. Buildings for military quarters at Fort Snelling, Minn. Rebuilding officers' quarters at Madison barracks, Sackett's Harbor.
19. Headstones for graves of soldiers in private cemeteries.
20. Military road from Alamosa, Colorado, to Pagosa Springs.
21. Military post near Niobrara river, Northern Nebraska or Dakota.
22. Signal Service.
23. Construction, maintenance, and repair of military-telegraph lines.
24. Erection of barracks at Fortress Monroe, Virginia.
25. Extension of military-telegraph lines from Fort Elliott.
26. Extension of military-telegraph lines, *via* Newport, on Mill Creek.
27. Military road from Ojo Caliente, New Mexico, to Pagosa Springs.
28. Military road from Scottsburg to Camp Stewart, Oregon.
29. Military post at El Paso, Texas.
30. Military post near Pagosa Springs, Colorado.

31. Removing remains of officers to national cemeteries.
32. Refunding to States for expenses incurred, &c.
33. Removing remains of W. E. English, lieutenant Seventh Infantry, U. S. A.
34. Payment to State of Tennessee for keeping, &c., United States prisoners.
35. Engineer appropriations.
36. Subsistence of the Army.
37. Support of military prison at Fort Leavenworth, Kansas.
38. Lost horses, &c. (Act March 3, 1849.)
39. Army pensions.
40. Commutation of rations to prisoners of war, &c.
41. Appropriations made in favor of sundry persons by various acts of Congress.

II.—*Record Division :*

In this Division are kept the following records: Appropriation ledger, personal-account ledgers; journals of appropriations and personal accounts; letter-books; report-books, showing certificates of official settlements; warrant-books (prior to the introduction of the requisition system); pay-requisition books (July 1, 1822, to date); credit-requisition books; registers of official settlements; record of official settlements; records of certificates of deposit; records of certificates to War and Interior Departments; bound blotters.

III.—*Quartermaster's Division :*

In this Division are examined the money and property accounts of disbursing officers of the Quartermaster's Department and Signal Service of the Army. These accounts cover a wide range:

1. The money accounts embrace disbursements for barracks and quarters, hospitals, store-houses, offices, stables, and transportation of Army supplies, the purchase of Army clothing, camp and garrison equipage, cavalry and artillery horses, fuel, forage, straw, material for bedding, and stationery; payments of hired men, and of "per diem" to extra-duty men; expenses incurred in the pursuit and apprehension of deserters; for the burial of officers and soldiers; for hired escorts, expresses, interpreters, spies, and guides; for veterinary surgeons, and medicines for horses; for supplying posts with water, and for all other proper and authorized outlays connected with the movements and operations of the Army not expressly assigned to any other Department.
2. Property purchased with the funds of the Quartermaster's Department is accounted for upon "returns" transmitted through the Quartermaster-General to the Third Auditor, (with the exception of "returns of clothing and camp and garrison equipage," which come under the supervision of the Second Auditor,) showing that the disposition made of it is in accordance with law and Army regulations. (Rev. Stats., 277.)
3. Claims of quartermasters' employes for extra compensation, under what is generally known as the "eight-hour law," for service rendered between June 25, 1868, and May 19, 1869 (sec. 2, act of

May 18, 1872), are examined and audited in this Division. The Division is subdivided into four sections, three of which are engaged in the examination of money accounts and property returns. The names, in alphabetical order, are divided into three parts in such manner as to make the labor in the respective sections as nearly equal as possible. In section 1 are examined the accounts of officers whose names begin with any of the first six letters of the alphabet, A to F, inclusive; in section 2, of officers whose names begin with any of the next eight letters; and in section 3, of officers whose names begin with any of the remaining letters of the alphabet.

Section 4 is composed of clerks who have charge of the correspondence and records of the Division, the records being—

1. Registers of quartermasters' accounts received.
2. Registers of signal accounts received.
3. Registers of quartermasters' returns received.
4. Registers of signal returns received.
5. Registers of property accountability.
6. Registers of returns settled.
7. Registers of letters received.
8. Registers of money differences and correspondence.
9. Registers of property differences and correspondence.
10. Registers of transfer settlements, account internal revenue.
11. Registers of transportation of volunteers.
12. Registers of personal charges.
13. Register of claims of quartermaster's employés, eight-hour law.
14. Register of property accountability closed under act of June 23, 1870. (16 Stats., 166.)
15. Register of references to Departments and Bureaus.
16. Register of references from Departments and Bureaus.
17. Register of property seized by agents of the Southern States prior to the commencement of hostilities in 1861.
18. Register of Division reports.
19. Register of calls on book-keeper for charges.
20. Register of press copies of letters sent.
21. Register of press copies of references.

IV.—Subsistence Division :

In this Division are examined and audited the accounts of all commissaries and acting commissaries in the Army, whose duties are to purchase the provisions necessary for its subsistence, and see to their proper distribution (Rev. Stats., 1141, 1191, &c.), and of all officers doing duty and rendering accounts in the Commissary Department, and doing duty in the Engineer Department. (Rev. Stats., 1151 to 1159.)

The Division is subdivided into two sections, in one of which are examined and audited the accounts pertaining to subsistence (Rev. Stats., 3648, 3714, &c.), the accounts of the governor and officers detailed for special duty in the military prison, Fort Leavenworth, Kansas (act May 21, 1874; 18 Stats., 148, chap. 186), and the accounts of the officer detailed by the Pay-

master-General to pay commutation of rations to colored soldiers while prisoners of war (act March 3, 1879; 20 Stats., 377, chap. 182); in the other, the accounts pertaining to the Engineer Department. (Rev. Stats., 1153, &c.)

The books kept in this Division are—

1. Register of commissary money accounts.
2. Register of commissary provision returns.
3. Register of commissary letters received and written.
4. Register of engineer money accounts.
5. Register of engineer property accounts.
6. Register of engineer letters received and written.
7. Register of Freedmen's Bureau money accounts.
8. Register of freedmen's property accounts.
9. Register of freedmen's letters received and written.

V.—Claims Division:

In this Division are examined the claims of a miscellaneous character arising in the various branches of service in the War Department, and growing out of the purchase or appropriation of supplies and stores for the Army; the purchase, hire, or appropriation of water-craft, railroad stock, horses, wagons, and other means of transportation; the transportation contracts of the Army; the occupation of real estate for camps, barracks, hospitals, fortifications, &c.; the hire of employes, mileage, courts-martial fees, travelling expenses, commutations, &c.; claims for compensation for vessels, railroad-cars, engines, &c., lost in the military service; claims growing out of the Oregon and Washington Indian war of 1855 and 1856, and other Indian wars; claims of various descriptions under special acts of Congress, other than claims for lost horses; claims to refund to States the amounts advanced by them to suppress the recent insurrection against the United States, and claims not otherwise assigned for adjudication.

The books kept in this Division are—

1. Register of miscellaneous claims.
2. Register of claims under act March 3, 1849, viz: For vessels, &c., lost in military service.
3. Register of Oregon and Washington Indian War claims.
4. Register of awards on claims. (Act March 3, 1849; 9 Stats., 393.)
5. Register of adverse decisions.
6. Register of report to Secretary of War.
7. Register of letters written.
8. Register of letters received.

VI.—State and Horse-Claims Division:

In this Division are examined and audited all claims of the several States and Territories for the costs, charges, and expenses properly incurred by them for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting their troops employed in aiding to suppress the recent insurrection against the United States; all claims arising out of Indian and other border invasions (acts July 17 and July 27, 1861; 12 Stats., 264, 276); and claims for compensation for loss of horses and equipage sustained by officers or enlisted men while in the military service of the

United States, and for the loss of horses, mules, oxen, wagons, sleighs, harness, while in said service, by impressment or contract. (Rev. Stats., 3482; act June 22, 1874.)

The claims of States for reimbursement are settled under provisions of acts of July 17 and 27, 1861 (12 Stats., 264, 276, 615). They comprise—

1. Claims of States for expenses incurred on account of the employment of their militia in aiding to suppress the late insurrection against the United States. (Special acts to reimburse Missouri, 14 Stats., 38; do., West Virginia, 14 Stats., 68; do., Ohio and Indiana, 15 Stats., 9; do., Kansas, 17 Stats., 344; do., Connecticut, 17 Stats., 605; do., Missouri, 20 Stats., 266.)
2. Claims of States and Territories for expenses incurred on account of Indian hostilities. (Special acts, 12 Stats., 754; 15 Stats., 310; 18 Stats., 390.)
3. Claims of Territories for expenses incurred in aiding to suppress the late insurrection against the United States. (Special acts for relief of Nebraska and Colorado, 14 Stats., 307; 15 Stats., 175.)

The *Horse-Claims* embrace—

1. Claims of field and staff or other officers, mounted militia men, volunteers, rangers, or cavalry, engaged in the military service of the United States since the 18th of June, 1812. (Rev. Stats., 3482.)
2. Claims for property captured, destroyed, or abandoned while in the military service of the United States, either by impressment or contract. (Rev. Stats., 3483.)
3. Claims for property under sections 3484, 3485, 3486, and 3487 of the Revised Statutes.

The books kept in this Division are—

1. Register of State claims filed.
2. Register of correspondence.
3. Register of settlements.
4. Records of enlistments in volunteer service, as reported by the Adjutants-General of the States, from April 1, 1861, to January 1, 1867; 120 vols.
5. Register of horse-claims filed.
6. Register of correspondence.
7. Register of settlements.
8. Register of awards.
9. Index registers.

VII.—*Collection Division:*

The duties of this Division, under existing orders, are: To answer all calls from courts, officials, or agents, for certified copies of papers on file; to make examinations to ascertain whether property purchased upon which claims are based has been taken up and accounted for as required by Army regulations; to ascertain from the books of the office such money balances as may be due from Army officers who have ceased disbursing public funds, either in the Quartermaster, Subsistence, Engineer, or Pension service, and to institute such proceedings as may be necessary to collect the same; to prepare all cases for suit; to check payments made

by disbursing officers of the Quartermaster's Department upon the accountability abstracts where purchases accounted for are not checked as paid; and to examine and report the service of soldiers of the War of 1812 to the Commissioner of Pensions. It is also engaged in the preparation of registers of the military service of individual soldiers in the War of 1812.

The books kept in the Division are—

1. Registers of delinquent officers, Quartermaster's Department.
2. Record of briefs, cases for suit.
3. Register of cases referred for suit.
4. Register of cases from Claims Division.
5. Register of inquiries from Quartermaster-General.
6. Register of claims from Commissioner of Pensions.
7. Register of miscellaneous inquiries.
8. Register of settlements, Third Auditor's Office.
9. Miscellaneous records.
10. Index of paymasters' accounts, War of 1812, of which abstracts have been made.

VIII.—*Army-Pension Division:*

In this Division are examined and audited all accounts which pertain to the payment of Army pensions in the United States. An account is kept with each pension agent, charging him with all moneys advanced for payment to pensioners under the proper bond (Rev. Stats., 4779) and fiscal year. At the end of each month the agent forwards his vouchers, abstracts of payments, and money statement direct to the Third Auditor, in whose office a preliminary examination is made for the purpose of ascertaining whether the money advanced is properly accounted for. (Rev. Stats., 283.) The receipt of the account is then acknowledged, and the account filed for audit. Each voucher is subsequently examined and the payment entered on the roll-book opposite the pensioner's name. The agent's account, when audited, is reported to the Second Comptroller for his revision, and a copy of the statement of errors, if any, is sent to the agent for his information and explanation. The account, when revised, is returned to the Auditor by the Second Comptroller and placed in the files of settled accounts, (Rev. Stats., 283,) where it remains for reference. The examination of pension agents' accounts involves the keeping of an account with each pensioner, the verification before payment of checks issued by pension agents, which have been presented after the expiration of the drawer's term of office, and in cases where the payee is dead, the designation of the party to whom payment should be made, and the general supervision of all matters relating to the payment of Army pensions. The Division is divided into four sections, three of which are engaged in the examination of the agents' accounts. Each voucher is examined in regard to proper form, legality of execution, date at which paid, and time paid for. Each payment is entered on its respective roll-book, opposite the pensioner's name, after comparison with the record as to rates, dates of commencement and termination of pension, and former payments. The agents' accounts are settled for each quarter, all erroneous payments being disallowed, and a statement of each account being forwarded to the Second

Comptroller for his revision. The fourth section is employed upon the records. Reports are received from the Commissioner of Pensions of all "original," "increase," "reissue," and "arrears" certificates issued; of names of pensioners dropped, suspended, restored, and transferred, and all changes whatever on Army-pension rolls made by the Commissioner of Pensions. It is the duty of the record section to enter all those issues, reissues, and changes, as well as those reported by the agents, upon the roll-books in advance of the examination and entry of the payments to which they pertain, and which are based upon them. The records extend from 1789 to the present time, and the accounts and vouchers have been received and audited since the organization of the office, under the act of March 3, 1817. (Rev. Stats., 277.)

The books kept in the Division are—

1. Roll-books of pensioners prior to 1861.
2. Roll-books of pensioners since 1861.
3. Bond-books, pension agents.
4. Records of accounts received.
5. Records of accounts settled.
6. Records of appropriations, pay, and counter requisitions.
7. Records of settlements of accounts for lost checks. (Rev. Stats., 300.)
8. Record of letters written.
9. Report of pensions granted prior to 1861.
10. Report of pensions granted since 1861.
11. Report of transfers of pensioners.
12. Report of "arrears of pensions."

IX.—*Copyist Division* :

In this Division the copying, comparing, and indexing of various official documents for use in courts, and the recording of official letters in permanent records, are done. There are now nine volumes of quartermaster's letters, twenty-nine volumes of letters relating to miscellaneous claims, nineteen volumes of letters pertaining to claims for lost horses, and four volumes of letters pertaining to the Collection Division. There are 161 volumes of letters in press-copy books to be recorded in permanent records.

X.—*Files Division* :

The number of official money settlements filed on July 1, 1880, was 183,380, not including the property returns, which number over 50,000.

CHAPTER VIII.

ACCOUNTS EXAMINED AND AUDITED IN THE OFFICE OF THE FOURTH AUDITOR OF THE TREASURY.

Section 277 of the Revised Statutes provides that "the Fourth Auditor shall receive and examine all accounts accruing in the Navy Department, or relative thereto, and all accounts relating to Navy pensions;

and, after examination of such accounts, he shall certify the balances, and shall transmit such accounts, with the vouchers and certificate, to the Second Comptroller for his decision thereon."

The work of the office is arranged in Divisions, under either a Chief of Division or a clerk in charge, and is in detail as follows:

I.—Division of Paymasters' and Marine Accounts:

The accounts of paymasters of all naval vessels, receiving-ships, navy-yards, and United States naval stations, at home and in foreign countries; of naval officers and men employed in the United States Coast Survey, and of the Fish Commission, and of the United States Marine Corps, are examined and audited in this Division. (Rev. Stats., 277, 283, 4395, 4396, 4684, 4687.)

II.—Prize-money and Record Division:

The accounts for prize-money awarded for all captures made by vessels of the United States Navy, and the individual claims arising therefrom, are examined and audited in this Division. It is also charged with the keeping of the records of the office and the preparation of all reports and tabular statements called for by Congress and the Secretary of the Treasury, and with keeping a record of appointments, resignations, removals, and absences, the care of issuing stationery used in the office, and the payment of salaries to employés. (Rev. Stats., Title LIV.)

III.—Navy-Pay and Allotment Division:

The accounts which are examined and audited in this Division are those of—

1. Navy pay offices at New York, Washington, Philadelphia, Boston, Baltimore, Norfolk, and San Francisco, by which offices the bulk of the naval supplies are purchased.
2. Navy financial agents, London, who are furnished with money from the United States Treasury to meet the drafts of naval disbursing officers on foreign stations.
3. Coal agents abroad, usually United States consuls, in charge of naval coal depots on foreign stations, for issuance of coal to naval vessels. (Rev. Stats., 1552.)
4. Consuls relieving naval seamen who may be left at the consulates by order of naval officers.
5. Allotments of half-pay of officers and men on vessels in commission, for the support of their families at home in the United States. (Nav. Reg., 1876, page 124.)
6. Officers of the Navy, other than disbursing officers, who may be charged on the ledgers of the office with the receipt of public moneys.
7. Private relief acts of Congress.
8. Claims for payment for materials and services furnished to the Navy, not paid for at the time of rendition.
9. Claims for extra pay to officers and men serving on the Pacific Coast during the Mexican War. (Acts Aug. 31, 1852, and Mar. 3, 1853; 10 Stats., 105, 220.)
10. Travelling expenses of officers of the Navy and Marine Corps. (Rev. Stats., 277, 283, 3714.)

IV.—Navy-Pension Accounts Division :

The accounts which are examined and audited in this Division are those of naval pensions due to invalids, widows, and orphans. The principal portion of the amount paid is the product of the interest of the naval-hospital fund. (Rev. Stats., Title LVII, secs. 277, 4693, and 4780.)

V.—Division of Bounty, Arrears of Pay, and General Claims :

In this Division are adjusted all claims arising under the various laws and regulations affecting the compensation of officers and men of the Navy, including arrears, difference, and increase of pay, accruing on account of different duty and length of service; claims for bounty for enlistments in the Navy, authorized by the joint resolution of February 24, 1864 (13 Stats., 402), and act of July 1, 1864 (13 Stats., 342), and for enlistments in the military service in cases where the men were transferred from the Army to the Navy; claims for compensation for clothing lost by the wreck or destruction of vessels belonging to the Navy, or destroyed by orders of medical officers or other competent authority, for the purpose of preventing the spread of contagious diseases (Rev. Stats., 288, 289, 290, and decisions of the Navy Department, July 12, 1842, and October 14, 1849); claims for balances due deceased officers, seamen, and marines, and other persons attached to the Navy or Marine Corps at the date of their respective deaths; claims arising under special laws of Congress for the benefit of persons belonging to the Navy—as, for example, the act of February 19, 1879 (20 Stats., 316), granting three months' extra pay for services in the war with Mexico, and the act of June 16, 1880 (21 Stats., 290), relating to machinists in the Navy; claims of petty officers, seamen, and others borne on the books of any vessel which by any casualty or in any action has been sunk or otherwise destroyed (Rev. Stats., 286, 287); reports of service performed by officers or enlisted men in the Navy or Marine Corps for the use and information of the Pension Office (Rev. Stats., 4693, 4728, 4730, 4756, 4757); reports of service of applicants for admission into the United States Naval asylum (Navy Regulations, 1876, ch. 28, p. 169). The correspondence of the Division relates to the evidence required to substantiate the validity of claims submitted for settlement and to the various matters connected with the several branches of business with which it is charged.

VI.—Book-keeper's Division :

The duties assigned to this Division are the recording of all requisitions for money to be advanced to the disbursing officers of the Navy and Pension Offices, the keeping of the accounts thereof, and the covering into the Treasury the balances refunded.

CHAPTER IX.

ACCOUNTS EXAMINED AND SETTLED IN THE OFFICE OF COMMISSIONER OF CUSTOMS.

Section 12 of the act of Congress of March 3, 1849 (9 Stats., 396), provided for the appointment by the President, by and with the advice and consent of the Senate, of an officer in the Department of the

Treasury, as one of its bureaus, to be called the Commissioner of Customs, who should perform all the acts and exercise all the powers theretofore devolved by law on the First Comptroller of the Treasury relating to the receipts from customs and the accounts of collectors and other officers of the customs, or connected therewith.

The office of Commissioner of Customs is arranged in five Divisions, viz:

Customs.
Warehouse Bond.
Stub.
Book-keeper's.
Miscellaneous.

Customs Division.

In this Division the following accounts are examined and revised, after they have been examined and statement made thereon by the First Auditor:

Receipts:

Duties on merchandise and tonnage. (Rev. Stats., Title XXXIII.)
Marine-hospital tax. (Rev. Stats., 4585, 4587.)
Fines, penalties, and forfeitures. (Sec. 2, act June 22, 1874; 18 Stats., 186.)
Steamboat fees. (Rev. Stats., 4451, 4458.)
Money received on account of deceased passengers. (Rev. Stats., 4268.)
Money received from sales of old material, rents, &c. (Rev. Stats., 3617 and 3618.)
Miscellaneous receipts. (Rev. Stats., 3692.)
Official emoluments. (Rev. Stats., 2654, 2658, 4185, 4186, 4381, and 4382.)

Disbursements:

Expenses of collecting the revenue from customs. (Rev. Stats., Title XXXIV, chap. 2; Rev. Stats., 3689; sec. 23 act June 22, 1874; 18 Stats., 190.)
Debentures, drawbacks, &c. (Rev. Stats., Title XXXIV, chap. 9, and sec. 3689.)
Excess of deposits for unascertained duties refunded. (Rev. Stats., Title XXXIV, chap. 8, and sec. 3689.)
Revenue-cutter service. (Rev. Stats., Title XXXIV, chap. 3.)
Marine-hospital service. (Rev. Stats., 4803, 4805, 4806.)
Official emoluments. (Rev. Stats., Title XXXIV, chap. 2.)
Awards of compensation. (Section 3, act June 22, 1874; 18 Stats., 186.)

Light-house establishment:

Salaries of light-house keepers. (Rev. Stats., Title LV.)
Supplies of light-houses. (*Id.*)
Repairs of light-houses. (*Id.*)
Expenses of light-vessels. (*Id.*)
Expenses of buoyage. (*Id.*)
Expenses of fog-signals. (*Id.*)
Expenses of lighting and buoyage of Mississippi, Missouri, and Ohio Rivers. (*Id.*)
Red River lights. (*Id.*)

Expenses of inspection of lights. (*Id.*)

Steam-tender for the light-house service. (*Id.*)

Standard weights and measures.

Salaries of custodians and janitors.

Judicial expenses, embracing accounts of United States marshals, district attorneys, and clerks, for fees in customs cases. (Rev. Stats., 824-830, 838, 919.)

Detection and prevention of frauds upon the customs revenue. (Act March 3, 1879; 20 Stats., 386.)

Life-saving service. (Rev. Stats., 4242-4249.)

Life-saving service, contingent expenses. (*Id.*)

Establishing life-saving stations. (*Id.*)

Rebuilding and improving life-saving stations. (*Id.*)

Construction of custom-houses.* (Special acts.)

Construction of marine-hospitals. (*Id.*)

Construction of appraisers' stores. (*Id.*)

Construction of barge-office, New York. (*Id.*)

Construction of light-houses.* (*Id.*)

Repairs and preservation of public buildings. (Annual appropriations.)

Fuel, light, and water for public buildings. (*Id.*)

Furniture and repairs of same, for public buildings. (*Id.*)

Heating, hoisting, and ventilating apparatus for public buildings. (*Id.*)

Miscellaneous accounts.

Disbursements on transfer warrants.

The following books are kept in this Division:

Register of customs account received from First Auditor.

Register of miscellaneous accounts received from First Auditor.

Register of suits instituted for the recovery of balances due the United States.

All claims arising under section 4 of the act of June 14, 1878 (20 Stats., 115, 130), under appropriations relating to the customs service, the balances of which have been exhausted or carried to the surplus fund, pursuant to the provisions of section 5 of the act of June 20, 1874 (18 Stats., 110), are adjusted in this Division, and an estimate of the amount necessary to pay such claims is also prepared.

Papers for the use of the Solicitor of the Treasury in suits instituted under the direction of this office, and reports on offers of compromise in such suits, are forwarded through this Division.

Salary accounts of special agents of the customs service, and accounts for travelling expenses, are examined and checked in this Division prior to payment by the disbursing clerks of the Department.

A statement of official emoluments of customs officers is prepared annually and submitted to Congress. (Rev. Stats., 2639.)

All requisitions for advances to customs officers and disbursing clerks and agents, out of the appropriation for expenses of collecting the rev-

* The jurisdiction in these and a few other classes of cases may be somewhat doubtful.

enue from customs, are checked in this Division in order to prevent large accumulations of funds in the hands of such officers.

Deficiency estimates for accounts of customs officers are prepared in this Division.

In case of the inadequacy of the fees and emoluments of any collector or surveyor of customs to afford him a reasonable compensation, after paying the expenses of his office, the Commissioner, through this Division, recommends to the Honorable Secretary of the Treasury that a certain amount be transferred from the expenses of collection to the emolument account to supply a deficiency in the emoluments. (Rev. Stats., 2692.)

The correspondence of this Division, omitting mention of that which is of a miscellaneous nature, embraces the following subjects:

Instructions to customs officers relative to the rendition of their accounts.

Making inquiries in regard to real or apparent discrepancies in their accounts.

Answering the inquiries of members of Congress, customs officers, claimants, and others.

Reports to Congress and to the Secretary of the Treasury.

Requests on the Register of the Treasury for certified transcripts of accounts.

To the FIRST AUDITOR:

Notices of charges made in settlement of accounts, and the reasons therefor; requests for him to state certain accounts.

To the SOLICITOR:

In relation to suits on official bonds of defaulting customs officers; also, in relation to compromises.

Warehouse-Bond Division.

The act of Congress establishing warehouses for the storage of imported merchandise was passed August 6, 1846. (9 Stats., 53; Rev. Stats., 2964. See, also, Rev. Stats., 2954–3008, and Customs Regulations, pt. 4, arts. 537–834.)

As authorized by this act, regulations to carry out its provisions were prescribed by the Secretary of the Treasury. (Rev. Stats., 2989.) These regulations have been amended from time to time.

The warehouse and bond accounts were adjusted with those of the customs until October 1, 1867, when the Secretary of the Treasury issued instructions to place the care and supervision of them under the Commissioner of Customs, who required "collectors and surveyors to account for the duties accruing on merchandise in bond with the same particularity as to detail as they are required to account for the duties on merchandise entered for consumption."

With this view forms were issued for the return of merchandise warehoused, transported, or exported, and collectors and surveyors

were directed to render said accounts monthly to the First Auditor of the Treasury, commencing on July 1, 1867. (Rev. Stats., 2640; Customs Regulations, arts. 780, 1018.)

Warehouses:

There are six classes of warehouses. (Rev. Stats., 2958, 2964; Customs Regulations, arts. 537, 555–582.)

- I.—Stores occupied by the United States. (Rev. Stats., 2965; Customs Regulations, art. 538.)
- II.—Warehouses occupied by importers exclusively for storage of merchandise. (Rev. Stats., 2960, 2961; Customs Regulations, arts. 539 to 548, inclusive.)
- III.—Warehouses occupied for general storage of merchandise. (Rev. Stats., 2961, 2965; Customs Regulations, arts. 540, 549.)
- IV.—Yards or sheds for the storage of heavy or bulky goods. (Rev. Stats., 2958, 2961; Customs Regulations, arts. 541, 550.)
- V.—Bins or parts of buildings for storage of grain. (Rev. Stats., 2561, 2959; Customs Regulations, arts. 542, 551, 552.)
- VI.—Warehouses exclusively for the manufacture of medicines, cosmetics, and the like. (Rev. Stats., 2960, 2961, 3433; Customs Regulations, arts. 543, 553, 554, 572–592, inclusive.)

There are but two of this last-named class in the United States—one in New York, the other in Providence, R. I.

Withdrawals from Warehouses:

For consumption, transportation, and exportation (Rev. Stats., 2980); for consumption (Customs Regulations, arts. 612–619, inclusive); for transportation (*Id.*, arts. 620–644, inclusive); for exportation (*Id.*, arts. 698–703, inclusive).

Construction and repair of vessels. (Rev. Stats., 2513, 2514; Customs Regulations, arts. 747–755, inclusive.)

Old railroad-iron entered for remanufacture. (Rev. Stats., 3021; Customs Regulations, art. 737.)

Withdrawal of salt from warehouse for curing fish. (Rev. Stats., 3022; Customs Regulations, arts. 738–746, inclusive.)

Merchandise in warehouse over one year. (Rev. Stats., 2970; Customs Regulations, art. 760.)

Merchandise in warehouse over three years. (Rev. Stats., 2971; Customs Regulations, arts. 761–764, inclusive.)

Merchandise unclaimed and stored in warehouse. (Rev. Stats., 2973; Customs Regulations, art. 760.)

Report of merchandise in warehouse. (Rev. Stats., 2988; Customs Regulations, articles 783 to 785, inclusive.)

Abatement and refund of duties on merchandise in warehouse in case of injury by casualties. (Rev. Stats., 2984; Customs Regulations, articles 769 to 772, inclusive.)

Ports at which there are bonded warehouses. (Synoptical series, 3439, December, 1877.)

Transportation:

Merchandise withdrawn from warehouse in one district and transported in bond to another. (Rev. Stats., 3000, 3001; Customs Regulations, articles 620 to 654, inclusive.)

Penalty for failure to transport and deliver merchandise. (Rev. Stats, 3001; Customs Regulations, articles 621, 633, 651.)

Extension, cancellation, and collection of transportation bonds. (Act October 12, 1837; Customs Regulations, articles 648, 649, 797 to 813, inclusive.)

Transportation of merchandise in bond from a port of delivery is not allowed. (Synoptical series of 1875, 2212.)

Exportation :

Merchandise withdrawn for exportation. (Rev. Stats., 2971, 2979; Customs Regulations, articles 698 to 703, inclusive.)

Time to produce landing certificates of merchandise landed in foreign countries. (Rev. Stats., 2979; Customs Regulations, article 700; Synoptical series of 1879, 3857 and 3932.)

Cancellation of export bonds. (Rev. Stats., 3044 to 3057; Customs Regulations, 706, 714, 732, 802 to 807, inclusive.)

Transportation and exportation to and from the Dominion of Canada, and to Mexico. (Rev. Stats., 3002 to 3008, inclusive; Customs Regulations, articles 707 to 735, inclusive.)

Records :

The following records are required and used in this Division:

- I.—A register of the accounts, as received from the First Auditor of the Treasury, giving their number in consecutive order, name of collector or surveyor, district, date when received, and time covered.
- II.—Register of bond accounts adjusted in this Division, giving date and number of the First Auditor's report, when received, time covered, by whom adjusted, when passed, balances as per collector's account, and balances as per adjustment.
- III.—A book of differences containing a true copy of the differences made on the accounts with the collectors and surveyors.
- IV.—A register of bonds delivered to the United States district attorney, (act October 13, 1837; Customs Regulations, articles 808 to 813, inclusive,) stating whether warehouse, rewarehouse, transportation, or exportation bonds, giving number and dates of bonds, names of principals, names of sureties, amount of duty, number of report, time covered, name of United States attorney, and date of the adjustment of the accounts.
A monthly report of all bonds delivered to the United States district attorney is made to the Solicitor of the Treasury.
- V.—A register of merchandise withdrawn from warehouse and sent to manufacturer's warehouse, giving number of bond, date of importation, number of First Auditor's report, in which the entry of withdrawal appears, amount of duty, number of export bond, date of withdrawal, name of principal, number of report for cancellation, and date of cancellation. (Rev. Stats., 2960, 2961, 3433; Customs Regulations, articles 543, 553, 554, 572 to 592, inclusive.)
- VI.—A register of bonded warehouses in the United States is also kept in this Division, which gives the name of the principal to the bond, class of the warehouse, date of approval, location and description of the premises. (Rev. Stats., 2954, 2959; Customs Regulations, articles 544, 545, 546.)

All changes made in the principal, class, and location of said bonded ware-

houses, are referred from the Secretary's Office to this office, in order that the necessary alterations may be made. (Customs Regulations, articles 556, 557.)

VII.—Two records of transportation entries—one a debit and the other a credit book—are kept in this Division, for the purpose of tracing all merchandise sent from one district to another. (Rev. Stats., 3000, 3001; Customs Regulations, articles 620–654.) For example, when merchandise is transported from New York to Philadelphia, a charge is made in the debit book against Philadelphia; and when Philadelphia receives the merchandise, New York is credited by the same in the credit book; and checks appear opposite the transportation bonds entered in each book, thereby showing that the merchandise was properly delivered and accounted for. Opposite the bond, reference is made to the page in each book where the bond thus checked may be found. Were it not for these records, there would be no check on the collectors, surveyors, or transportation companies for goods in transit; and the absence of this check would largely enhance the liability to loss.

In many instances the merchandise never reaches its destination. It is either destroyed on the route or withdrawn and duty paid at some port other than the one to which it was destined.

VIII.—There is also used in this Division a bond ledger, in which a transcript of the warehouse and bond accounts as adjusted is made, giving the time covered, number of the First Auditor's report, balance of bonds from last return, amount of merchandise warehoused, amount of merchandise rewarehoused, amount of merchandise constructively warehoused, increase of duties, excess of duties, additional duties, amount of duties paid on withdrawals, withdrawals for transportation and exportation, deficiencies, allowances for withdrawals for the construction of vessels, (Rev. Stats., 2513, 2514,) for damage and sales of merchandise remaining unclaimed in warehouse over three years.

The record of these accounts which is kept in this office is the only record made of them; a record of the other accounts adjusted by the Commissioner of Customs is also kept by the Register of the Treasury.

The annual report of all warehouse transactions in the United States is taken from the ledger kept in this Division.

Correspondence:

The correspondence of this Division relates to the adjustment of the accounts and other matters incidental to this branch of business. Letters are frequently written to instruct customs officers as to the proper method of rendering their accounts, to correct errors in the same, and settle questions arising as to rates of duty, and to the tracing of goods transported under bond from one district to another.

Stub Division.

This Division was established in conformity with the recommendations embodied in the report of the Commissioner of Customs for the fiscal year ended June 30, 1877.

Its duties comprise the keeping of a record of the numbers of all stubs and receipts for duties and fees sent to collectors and surveyors

of customs by, and of all stubs returned by them to, the Treasury Department; the examination and summarization of all stubs so returned, and a comparison of the collections thereon reported with the accounts and monthly reports of moneys received by the officers making such collections; and the recording of these collections in a condensed form on the "Register of moneys received."

The correspondence of the Stub Division relates only to the disposition of the stubs, and receipts for duties and fees, and to inquiries concerning such differences between the accounts of collectors and surveyors of customs and the stubs of receipts for duties and fees, as may be found requiring an explanation.

Under the regulations of the Department, it is required that for every collection made by an officer of the customs service, except in the collection districts of Boston, New York, Philadelphia, Baltimore, New Orleans, and San Francisco, where the law provides for the appointment of a naval officer, a receipt (Form 399 or 491) shall be issued, and that the serial stub of such receipt shall be filled out, and the signature of the payor be obtained thereto, whether the party making the payment may desire a receipt or not, or, where moneys are received by mail, or under such circumstances as to preclude the obtaining of the signature of the payor, a note of the circumstances must be entered on the stub.

At the close of each month, it is made the duty of collectors and surveyors of customs to forward to the Commissioner of Customs the stubs of all receipts for duties and fees that have been issued within their collection districts, or ports, during such month; and upon the arrival of the stubs, they are referred to this Division for examination and comparison with the accounts of the collector or surveyor.

The collections for which the receipts for duties and fees (Forms 399 and 491) are required to be issued, and the stubs thereof filled out, are the following:

Duties on imports. (Rev. Stats., Title XXXIII.)

Additional duties. (*Id.*)

Penal duties. (Section 2, act June 22, 1874; 18 Stats., 186.)

Tonnage duties. (Rev. Stats., Title XXXIII.)

Amounts received for services of customs officers. (Rev. Stats., 2647.)

Amounts received for salary of storekeepers in private bonded warehouses. (Rev. Stats., 2647.)

Over-time of inspectors of customs. (Rev. Stats., 2880, 2881.)

Storage, labor, and drayage. (Rev. Stats., 2647.)

Marine-hospital dues. (Rev. Stats., 4585, 4587.)

Fines, penalties, and forfeitures. (Section 2, act June 22, 1874; 18 Stats., 186.)

Inspector of steamboats. (Rev. Stats., 4451, 4458.)

Licenses to masters, mates, engineers, and pilots. (Rev. Stats., 4451, 4458.)

Miscellaneous customs receipts. (Rev. Stats., 3692.)

Amounts derived from the sale of condemned Government property. (Rev. Stats., 3618.)

Cording and sealing (Customs Regulations, art. 640), and any other miscellaneous collections that may arise.

Weighing and gauging. (Rev. Stats., 2920.)

Sale of glass seals. (Customs Regulations, article 640.)

Repayments to the marine-hospital fund. (Rev. Stats., 4803, 4805, 4806.)

Amounts received by United States revenue-cutters for services rendered to vessels in distress.

Official fees. (Rev. Stats., Title XXXIV, ch. 2.)

Moneys received on account of deceased passengers. (Rev. Stats., 4268.)

Book-keeper's Division.

In this Division a record is kept of the debtor and creditor entries in all accounts settled by this office, except for refund of duties illegally exacted, with a detailed statement of any differences that may exist.

Notification, in writing, to be signed by the Commissioner, is issued from this Division on each account, giving the person rendering the account a statement of the condition of the account, with the balance and items of difference, if any there be.

The following books are kept in this Division:

Ledger :

Customs and disbursements. A—L:

Customs and disbursements. M—Z.

Marine-hospital collections.

Steamboat fees.

Fines, penalties, and forfeitures.

Official emoluments.

Marine-hospital service.

Excess of deposits and debentures.

Revenue-cutter service.

Collectors' construction accounts.

Light-house engineers and inspectors.

Special accounts.

United States attorneys, clerks of United States courts, and United States marshals.

Balances of customs officers.

Balances of engineers and inspectors of light-houses.

Blotter.

Miscellaneous Division.

In this Division the accounts which fall under the following heads are adjusted:

Refund of duties illegally exacted, or exacted in excess; tonnage duties, marine-hospital money, customs fees, and other moneys erroneously exacted. (Rev. Stats., 3012½, 3013.)

Refund of proceeds of sales of unclaimed merchandise. (Rev. Stats., 2974.)

Refund of duties under special acts of Congress.

Requisitions are made on the Hon. Secretary of the Treasury for advances to disbursing officers, as follow:

On account of expenses of collecting the revenue from customs.

On account of detection and prevention of frauds upon the customs revenue.

On account of refunding excess of deposits for unascertained duties.

On account of debentures on exported goods.

On account of revenue-marine service.

On account of marine-hospital service.

On account of awards of compensation in lieu of moieties.

On account of construction and maintenance of lights, beacons, and buoys.

On account of construction of custom-houses, marine hospitals, &c.

On account of furniture, and repairs of furniture, for public buildings.

On account of fuel, light, and water for public buildings.

On account of repairs and preservation of public buildings.

On account of heating, hoisting, and ventilating apparatus for public buildings.

On account of custodians and janitors for public buildings.

On account of life-saving service.

On account of life-saving service, contingent expenses.

On account of life-saving service, establishment of.

On account of transfers by warrant and counter-warrant.

The following reports are received in this Division from the Hon. Secretary of the Treasury:

Appointments and changes in—

Custom-house officers and employés.

Revenue-marine officers and employés.

Marine-hospital officers and employés.

Light-house officers and employés.

Life-saving service, superintendents, keepers, and surfmen.

Public buildings, employés in.

Expenditures authorized from expenses of collecting the revenue from customs.

Remission of fines, penalties, and forfeitures.

Buildings rented.

From Disbursing Officers:

Returns of moneys received and paid.

Statements of public funds on deposit and on hand.

From Customs Officers :

Statements of all fines, penalties, or forfeitures incurred.

Statements of disposition of all fines, penalties, and forfeitures.

The following records are kept in this Division :

Register of commissioned customs officers.

Register of appointment and changes in subordinate customs officers.

Register of appointment and changes in revenue-marine service.

Register of appointment and changes in marine-hospital service.

Register of appointment and changes in the light-house service.

Register of appointment and changes in public buildings.

Record of buildings rented.

Record of seizures, fines, penalties, and forfeitures.

Record of remissions of fines, penalties, and forfeitures.

Register of oaths of office.

Register of refunds allowed.

Register of letters and papers received.

Register of letters and papers referred.

Record of letters written to customs officers.

Record of letters written, miscellaneous.

All bonds required from customs officers are prepared in this Division, and, when properly executed, presented to the Commissioner of Customs for his approval. Commissions of customs officers are transmitted through this Division.

This Division has charge of the general files of the office, which include correspondence, records, registers, bonds of customs and of disbursing officers, and oaths of office.

CHAPTER X.

ACCOUNTS AUDITED AND SETTLED IN THE OFFICE OF THE AUDITOR OF THE TREASURY FOR THE POST-OFFICE DEPARTMENT—THE SIXTH AUDITOR.

The act of Congress of July 2, 1836, (5 Stats., 80, 81,) “to change the organization of the Post-Office Department, and to provide more effectually for the settlement of the accounts thereof,” provided for the appointment by the President, with the consent of the Senate, of “an Auditor of the Treasury for the Post-Office Department, whose duty it shall be to receive all accounts arising in the said Departments, [sic] or relative thereto, to audit and settle the same, and certify the balances to the Postmaster-General: *Provided*, That if either the Postmaster-General, or any person whose account shall be settled, be dissatisfied therewith, he may, within twelve months, appeal to the First Comp-

troller of the Treasury, whose decision shall be final and conclusive." (See Revised Statutes, 270.)

The officer thus provided for is required to keep and preserve all accounts, with the vouchers, after settlement. He shall close the account of the Department quarterly, and transmit to the Secretary of the Treasury quarterly statements of its receipts and expenditures. He shall report to the Postmaster-General, when required to do so, the manner and form of keeping and stating the accounts of the Department, and the official forms of papers to be used in connection with its receipts and expenditures. He shall report to the Postmaster-General all delinquencies of postmasters in rendering their accounts and returns, or in paying over money-order funds and other receipts at their offices. He shall register, charge, and countersign all warrants upon the Treasury for receipts or payments issued by the Postmaster-General, when warranted by law. He shall perform such other duties in relation to the financial concerns of the Department as may be assigned to him by the Secretary of the Treasury, and make to the Secretary or to the Postmaster-General such reports respecting the same as either of them may require. (Rev. Stats., 277.) He has direct official relation to both the Treasury and the Post-Office Department. (7 Op. Att'ys-Gen., 439.) To him are assigned the duties of examining the returns of postmasters and of notifying them of errors found therein; of adjusting their accounts; of designating the post offices from which contractors shall make collections, and of furnishing them the blank orders and receipts necessary for that purpose; and, upon receipt of such collection orders, together with the acknowledgments of collections and of certificates from the Division of Inspection, office of the Second Assistant Postmaster-General, of the performance of service, of adjusting the quarterly compensation of contractors for carrying the mail, and of transmitting to them the drafts issued in payment of the balances found due; of adjusting the accounts for advertising, mail-bags, mail-locks and keys, stamps, special agents, and all other demands properly arising under the laws, contracts, regulations, or orders of the Department; of closing the accounts of the Department quarterly, and of reporting the amounts paid by postmasters pursuant to appropriations made by law; and of registering, charging, and countersigning all warrants upon the Treasury for receipts and payments when warranted by law, as well as all drafts issued in payment or collection of debts. To the Auditor is also assigned the duty of adjusting and settling the money-order accounts of postmasters, and attending to all correspondence relating thereto. It is the duty of the Auditor to report to the

Postmaster-General all delinquencies on the part of postmasters in paying over the moneys in their hands, all failures of postmasters to render their quarterly returns according to law, and all failures of appointees to qualify. To the Auditor is also assigned the duty of collecting from late postmasters balances due the United States upon their general postal and money-order accounts; and in cases of failure to collect such balances by drafts in favor of postmasters or other authorized agents of the Department, to prepare and transmit to the Department of Justice certified copies of all accounts and papers necessary for the institution of legal proceedings against such late postmasters and their sureties. To the Auditor should be transmitted all quarterly and general accounts; all vouchers and letters relating thereto; all receipts of postmasters for money and stamps turned over to them by their predecessors or other postmasters; all acknowledgments of drafts issued in payment of balances; all receipts of mail contractors for, and their acknowledgments of, the collections from postmasters; all letters admitting or contesting balances due on the general accounts of postmasters and mail contractors; all receipts for drafts issued in collecting such balances; all letters returning such drafts, or reporting the non-payment thereof; and all letters in relation to the settlement of the money-order accounts of postmasters.

Divisions of Auditor's Office.

There are in the office of the Auditor of the Treasury for the Post-Office Department eight Divisions, through which the work of the office is distributed. Their names and duties are as follow:

Collecting Division.—To this Division is assigned the collection of balances due from all postmasters, late postmasters, and contractors; also the payment of all balances due to late and present postmasters, and the adjustment and final settlement of postal accounts. (Rev. Stats., 292.)

Stating Division.—The general postal accounts of postmasters and those of late postmasters, until fully stated, are in charge of this Division. (Rev. Stats., 292.)

Examining Division.—Receives and audits the quarterly accounts current of all post offices in the United States. It is divided into four subdivisions, viz., the opening-room, the stamp-rooms, the examining corps proper, and the error-rooms. (Rev. Stats., 277.)

Money-Order Division.—Accounts of money-orders paid and received are examined, and paid money-orders are assorted, checked, and filed, remittances of money-order funds are registered and checked, and errors corrected by this Division. (Rev. Stats., 293.)

Foreign Mail Division.—Has charge of the postal accounts with foreign governments, and the accounts with steamship companies for ocean transportation of the mails.

Registering Division.—Receives from the examining division the quarterly accounts current of all the post offices in the United States, re-examines and registers them,

and exhibits in the register ending June 30 of each year the total amount of receipts and expenditures for the fiscal year. (Rev. Stats., 277.)

Pay Division.—The adjustment and payment of all accounts for the transportation of the mails, whether carried by ocean-steamers, railroads, steamboats, or any mail-carrier; the accounts of the railway postal service, railway postal clerks, route agents and local agents, mail depredations, special agents, free-delivery system, postage-stamps, postal-cards, envelopes, stamps, maps, wrapping-paper, twine, mail-bags, mail-locks and keys, advertising, fees in suits on postal matters, and miscellaneous accounts, are assigned to this Division. (Rev. Stats., 277.)

Book-keeping Division.—The duty of keeping the ledger accounts of the Department, embracing postmasters, late postmasters, contractors, late contractors, and accounts of a general, special, and miscellaneous character, is performed by this Division. (Rev. Stats., 294; act March 3, 1875; 18 Stats., 343.)

The Duties of the Auditor as prescribed by Statute.

Section 4 of the act of March 3, 1875 (18 Stats., 340, 343), "making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-six, and for other purposes," provides that thereafter "the Sixth Auditor shall keep the accounts in his office so as to show the expenditures of the Post-Office Department under each item of appropriation provided by law."

Section 292 of the Revised Statutes provides that the Sixth Auditor shall superintend the collection of all debts due the Post-Office Department, and all penalties and forfeitures imposed for any violation of the postal laws, and take all such other measures as may be authorized by law to enforce the payment of such debts and the recovery of such penalties and forfeitures. He shall also superintend the collection of all penalties and forfeitures arising under other statutes, where such penalties and forfeitures are the consequence of unlawful acts affecting the revenues or property of the Post-Office Department.

Section 293 requires that he shall keep the accounts of the money-order business separately, and in such manner as to show the number and amount of money-orders issued at each office, the number and amount paid, the amount of fees received, and all the expenses of the money-order business.

Section 294 provides that he shall state and certify quarterly to the Postmaster-General an account of the money paid by postmasters out of the receipts of their offices, and pursuant to appropriations, on account of the expenses of the postal service, designating the heads under which such payments were made.

Sections 295 provides that whenever a judgment is obtained for a debt or damages due the Post-Office Department, and it satisfactorily

appears that such judgment, or so much thereof as remains unpaid, cannot be collected by due process of law, the Sixth Auditor may, with the written consent of the Postmaster-General, compromise such judgment, and accept in satisfaction less than the full amount thereof.

Section 296 provides that in case of delinquency of any postmaster, contractor, or other officer, agent, or employé of the Post-Office Department, in which suit is brought, the Sixth Auditor shall forward to the Department of Justice certified copies of all papers in his office tending to sustain the claim.

Section 298 provides that any mayor of a city, justice of the peace, or judge of any court of record in the United States, may administer oaths in relation to the examination and settlement of the accounts committed to the charge of the Sixth Auditor.

Receipts and Expenditures of the Post-Office Department.

The Postmaster-General prescribes the manner of keeping accounts. He controls, according to law, and subject to the settlement of the Sixth Auditor, all expenses incident to the service of the Department. He superintends the disposal of the moneys of the Department, and directs the manner in which balances shall be paid over. (Rev. Stats., 396.)

The money required for the postal service in each year is appropriated by law out of the revenues of the service. (Rev. Stats., 4054.) The postal revenues—derived from letter and other postage, registered letters, box-rents and branch offices, fines and penalties, postage-stamps, stamped envelopes and wrappers, and postal-cards, dead-letters, money-order business, and miscellaneous items—and all debts due to the Post-Office Department, are required by law to be paid into the Treasury of the United States. (Rev. Stats., 407.) But this requirement is literally fulfilled only with respect to a small portion, averaging about one-fifth of the whole annual revenue. (Rev. Stats., 3617.) Thus in the year ended June 30, 1880, the revenue collected amounted to \$33,315,479.34, while the sums actually deposited with the Treasurer and Assistant Treasurers amounted to only \$6,857,652.44. The difference was paid into the Treasury only by construction of law. If section 407 were the only enactment on the subject, actual payment would be necessary; but section 3861 of the Revised Statutes provides that "The salary of a postmaster, and such other expenses of the postal service authorized by law as may be incurred by him, and for which appropriations have been made, *may be deducted out of the receipts of his office*, under the direction of the Postmaster-General;"

and section 406 provides that “Upon the certified quarterly statement by the Sixth Auditor of the payments by postmasters on account of the postal service, the Postmaster-General shall issue his warrant to the Treasurer to carry the amount to the credit of the postal revenues and to the debit of the proper appropriations upon the books of the Auditor.” The quarterly statement referred to is required by section 294 of the Revised Statutes.

A copy of a warrant issued under section 406 of the Revised Statutes, and of a quarterly statement made as prescribed by section 294, is here inserted:

POST-OFFICE DEPARTMENT,
January 19, 1881.

To Hon. JAMES GILFILLAN,
Treasurer of the United States.

SIR: This shall be your warrant for placing to the credit of the United States, for the service of the Post-Office Department, the sum of six million one hundred and nineteen thousand forty-three dollars twenty-nine cents of the revenue collected by postmasters on account of the quarter ended September 30, 1880, and also for placing to the debit of the United States, a like sum, for moneys expended by said postmasters, on account of the same quarter, for the several objects for which appropriations have been made by law, as appears by the annexed report of the Auditor of the Treasury for the Post-Office Department, dated January 19, 1881.

JAS. N. TYNER,
Acting Postmaster-General.

\$6,119,043²⁹/₁₀₀

Countersigned:
J. M. MCGREW,
Auditor.

—
OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT,
January 19, 1881.

I certify that the following sums were transferred and paid over by postmasters of the United States to creditors of the Post-Office Department, according to law, on account of the quarter ended September 30, 1880:

Compensation of postmasters	\$1,998,912 67
Compensation of clerks for post offices.....	911,007 64
Compensation of letter-carriers, and incidental expenses.....	629,510 00
Wrapping-paper	
Twine	
Postmarking and cancelling stamps.....	
Letter-balances	
Rent, light, and fuel for post offices	87,274 63
Stationery	12,431 91
Furniture for post offices	7,471 13
Miscellaneous—Office of First Assistant Postmaster-General	32,103 98
Inland-mail transportation—railroad.....	624,382 39
Inland-mail transportation—star.....	606,847 25
Compensation of railway-post-office clerks	366,443 87
Compensation of route-agents	302,100 63
Compensation of mail-route messengers	51,599 71
Compensation of local agents	30,879 75
Compensation of mail-messengers	176,937 04
Mail-locks and keys	10,581 50
Mail-bags and catchers	36,622 92
Mail depredations and special agents	17,021 42
Postage-stamps	
Distribution of postage-stamps	25 96
Stamped envelopes and newspaper-wrappers	106,678 76

Distribution of stamped envelopes and newspaper-wrappers	\$3,862 56
Postal-cards.....	
Distribution of postal-cards.....	1,580 50
Registered-package envelopes, locks, and seals	
Official envelopes for postmasters	69,257 14
Dead-letter envelopes	29,401 77
Ship, steamboat, and way-letters	232 03
Fees to United States marshals, attorneys, clerks of courts, and counsel.	929 10
Eugraving, printing, and binding drafts and warrants	
Advertising	4,125 63
Miscellaneous—Office of Postmaster-General	89 00
Official Postal-Guides.....	
Foreign-mail transportation	732 32
Total	6,119,043 29

Respectfully submitted:

J. M. McGREW,
Auditor.Hon. HORACE MAYNARD,
Postmaster-General.

Prior to the first of November the Postmaster-General makes an estimate of the revenue which will probably be collected during the ensuing fiscal year, and of the expenses which will probably be incurred. A copy of these estimates is furnished to the Secretary of the Treasury, to be reported to Congress in the regular printed estimates. (Rev. Stats., 414.)

The estimates for the postal service are required by law to be made in detail; the more important items being: Compensation to postmasters; to clerks in post offices; inland transportation by railroad routes; by star routes; by steamboat routes; railway-post-office car service; railway-post-office clerks; route agents.

The appropriations of postal revenue are made in detail, corresponding to the estimates, and no more can be expended for each particular service than the sum authorized until an appropriation is made (out of the revenue) to supply the deficiency.

The revenue collected each year is never sufficient for the expenses of the year; and, to meet the deficiency anticipated by the Postmaster-General, appropriations are made annually of money *in the Treasury*. Money appropriated for this purpose is paid to the Postmaster-General by warrant of the Secretary of the Treasury, countersigned by the First Comptroller.

Accounts of postmasters are settled quarterly. In their adjustment by the Sixth Auditor, the postmasters are charged with all revenue collected during the quarter, and are credited with their salaries and the expenses lawfully incurred under the direction of the Postmaster-General. (Rev. Stats., 3843, 3844.) Balances due to the United States at the end of every quarter-year must be deposited or paid over as required. Eighty-six post offices are now designated by the Postmas-

ter-General as depositories of postal revenue. (Rev. Stats., 396.) They receive and retain, subject to the drafts of the Department, the balances due from certain adjacent offices as well as their own.

The drafts on these depositories are for payments to contractors, to postmasters, or to other persons to whom money is due on account of the postal service. Transfers of funds from one depository to another are also made by drafts. Money in the Treasury to the credit of the Post-Office Department is drawn by warrants, the form of which is shown by the following copy of one:

POST-OFFICE DEPARTMENT.

No. 12,708.

WARRANT

\$775.

On Auditor's report No. 1,182—January 20, 1880.

To the TREASURER OF THE UNITED STATES:

Pay to J. M. Peck, or order, seven hundred and seventy-five dollars.

D. M. KEY,
Postmaster-General.

Countersigned:

F. B. LILLEY,
Act'g Auditor, P. O. Department.

The Assistant Treasurer of the United States at New York will pay this amount.

A. U. WYMAN,
Ass't Treasurer of the United States.

Transportation of the Mails.

Prior to July, 1880, appropriations of money in the Treasury to meet anticipated deficiencies of postal revenue were paid to the Postmaster-General from time to time, as needed, upon requisitions in the form of accounts stated by the Sixth Auditor and rendered by the Postmaster-General to the Secretary of the Treasury. A specimen of such an account and of the letter transmitting it is here given, as follows:

THE TREASURY OF THE UNITED STATES

To the UNITED STATES FOR THE SERVICE OF THE POST-OFFICE DEPARTMENT.
For amount of appropriation required to supply a deficiency in the revenues of the Post-Office Department for the fiscal year ending June 30, 1881, under section 2 of the act approved June 11, 1880, (Statutes, chap. 206, page 179, pamphlet edition)..... \$1,000,000

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT,
January 27, 1881.

I certify that the foregoing account of appropriation for the service of the Post-Office Department, in pursuance of the act named, as taken from the books of this office, is correct.

J. M. MCGREW, *Auditor.*

OFFICE OF THE THIRD ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., January 28, 1881.

Hon. JOHN SHERMAN,
Secretary of the Treasury.

SIR: By direction of the Postmaster-General, I have the honor to transmit herewith an account against the Treasury of the United States for the sum of one million dollars (\$1,000,000) to supply deficiencies in the revenue of the Post-Office Department for the fiscal year ending June 30, 1880, under section 2 of the act approved June 11, 1880, (Statutes, chap. 206, page 179, pamphlet edition.)

A. D. HAZEN,
Third Assistant Postmaster-General.

The accounts were referred by the Secretary to the First Auditor "for examination and settlement." The Auditor referred them, with his certificate, to the First Comptroller for his decision thereon; and the Comptroller certified the "balance" to the Register, making it payable to the Postmaster-General. In due course of business, warrants were issued, and drafts drawn in favor of the Postmaster-General, who, by indorsement on the drafts, had the amounts placed to the credit of his Department on the books of the Treasurer, or of an Assistant Treasurer.

The Secretary's warrants being issued on settled accounts, they were not charged on the Register's books against the Post-Office Department, but were charged only against the appropriation.

Such was the long-established usage up to July 9, 1880, when a change was initiated by the Assistant Secretary of the Treasury, who sent a circular letter to the First Auditor and Register informing those officers that the appropriation of \$3,883,420 to supply deficiencies in the revenues of the Post-Office Department for the year ending June 30, 1881, would be drawn upon the warrant of the Postmaster-General, countersigned and registered by the Auditor of the Treasury for the Post-Office Department, and that the amount would be charged to the Post-Office Department upon the books of the Register; and that at the end of each quarter the quarterly statement of the Sixth Auditor required by section 277 of the Revised Statutes would be referred to the First Auditor for the statement of a formal account, upon which (when certified to him by the Comptroller) the Register would debit the Post-Office Department, under the proper heads, with the total amount of postal revenue, and credit it with the total amount of disbursements during the quarter.

The statutory requirement of a quarterly statement by the Sixth Auditor is as follows: "He shall close the account of the Department quarterly, and transmit to the Secretary of the Treasury quarterly statements of its receipts and expenditures." (Rev. Stats., 277.) Heretofore no action has been taken by the Secretary upon such statements when received.

The order of the Assistant Secretary raised the question whether a restatement of the Sixth Auditor's statement by the First Auditor would be in conformity to law; and if it were, what advantage would be gained by such restatement. The Sixth Auditor's statement of receipts and expenditures cannot be changed by any other accounting officer (except on appeal to the First Comptroller), and no other accounting officer has any information on the subject, nor any means of

getting information outside of the Sixth Auditor's Office, and the law does not *require* a restatement.

The object in view was to get the account of receipts and expenditures of the Post-Office Department entered upon the books of the Register of the Treasury; and it was thought that this could be accomplished only by stating the accounts in the same manner as accounts of disbursing officers of the Treasury Department are stated.

The former practice treated the postal deficiency appropriation of money in the Treasury, in the same way as appropriations by private acts of Congress to pay individual claims against the Treasury Department are treated. In each of the latter cases the First Auditor states an account and finds due to the claimant the sum specified in the act. The First Comptroller certifies the "balance," and the Secretary issues his warrant to pay it. This ends the matter. No account is opened on the Register's books in the name of the claimant.

In the case of a disbursing officer of the Treasury Department, when a warrant is issued for an advance to him, an account is opened against him by the Register, who places the amount of the advance to his debit, there to stand until the disbursing officer's accounts for the disbursement of the money are adjusted by the Auditor and Comptroller.

The Post-Office Department cannot be called upon to render an account of its receipts and expenditures to the Treasury Department; and to make the Sixth Auditor's quarterly statement the basis of an account to be stated by the First Auditor and First Comptroller would seem to be an idle form. Neither of the latter officers could advisedly certify the correctness of balances shown by the Sixth Auditor to be due to or from the Post-Office Department.

Although there is no law or precedent for it, there seems to be no reason why the Sixth Auditor's statement should not be entered upon the books of the Register of the Treasury; and it is within the province of the Secretary of the Treasury to direct, by regulation, that this should be done.

The following is the letter above referred to:

Circular Letter.

TREASURY DEPARTMENT,
Office of the Secretary, Washington, D. C., July 9, 1880.

Section 2 of the act of June 11, 1880, making appropriations for the service of the Post-Office Department, enacts "that if the revenue of the Post-Office Department shall be insufficient to meet the appropriations made by this act, then the sum of three million eight hundred and eighty-three thousand four hundred and twenty dollars, or so much thereof as may be necessary, be, and the same is hereby, appropriated,

to be paid out of any money in the Treasury not otherwise appropriated, to supply deficiencies in the revenue of the Post-Office Department for the year ending June 30, 1881."

The amount thus appropriated will be drawn upon the warrant of the Postmaster-General, countersigned and registered by the Auditor of the Post-Office Department; but the amount so required shall be charged to the Post-Office Department upon the books of the Register of the Treasury. At the end of each quarter the quarterly statement of the Sixth Auditor, required by section 277 of the Revised Statutes, will be referred to the accounting officers of the Treasury (First Auditor and First Comptroller) for the statement of a formal account, upon which the Register of the Treasury will debit the Post-Office Department, under the proper heads, with the total amount of postal revenues received during the quarter, and credit it under the proper heads, with the total amount of disbursement for the quarter.

J. K. UPTON,
Assistant Secretary.

Hon. FIRST AUDITOR.

CHAPTER XI.

THE MODE OF COLLECTING MONEY FROM THE GOVERNMENT.

Circular.—Indorsement and Payment of Treasury Drafts and Post-Office Department Warrants.

1881. DEPARTMENT No. 2. Treasurer's Office No. 33.	}	TREASURY OF THE UNITED STATES, Washington, D. C., January 1, 1881.
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Treasury drafts and post-office warrants must not be paid until the indorsements conform to the following regulations:

1. The name of the payee, as indorsed, must correspond in spelling with that on the face of the draft; no guarantee of an indorsement imperfect in itself can be accepted. If the name of a payee as written on the face of a draft is spelled incorrectly, the draft should be returned to the Treasurer U. S. for correction.

2. Indorsements by mark (×) must be witnessed by two persons who can write, giving their places of residence.

3. Indorsements by executors, administrators, guardians, or other fiduciaries must be accompanied by certified copies, under seal, of letters testamentary, letters of administration, of guardianship, or other evidence of fiduciary character, as the case may be.

4. Payees and indorsees must indorse by their own hands; officials, officially with fully title; firms, the usual firm-signature by a member of the firm, not by a clerk or other person for the firm.

5. Every indorsement must be by the proper written (not printed) signature of the person whose indorsement is required.

6. Powers of attorney for the indorsement of drafts in payment of claims must state the number, date, and amount of draft, and number and kind of warrant, and be dated subsequently to the date of the

drafts; must be witnessed by two persons, and must be acknowledged by the constituent before the Treasurer of the United States or an Assistant Treasurer, a judge or clerk of a district court of the United States, a collector of customs, a notary public under his seal, or a justice of the peace or commissioner of deeds; if before either of the two latter, the certificate and seal of the county clerk as to the official character and signature of the justice or commissioner is required. If executed in a foreign country, the acknowledgment must be made before a notary public, with his seal attached, or a U. S. consul or minister. The officer taking the acknowledgment must certify that the letter of attorney was read and fully explained to the constituent at the time of acknowledgment (see section 3477, Revised Statutes), and that said constituent is personally well known to him to be the identical person named in and who subscribed his name to said power of attorney.

7. Evidence of authority to indorse for incorporated or unincorporated companies must accompany drafts drawn or indorsed to the order of such companies or associations. Such evidence should be in the form of an extract from the by-laws or records of the company or association, showing the authority of the officer to indorse and receive and receipt for moneys for the company, and giving his name and the date of his election or appointment, which extract must be verified by a certificate under seal signed by the President and Secretary, or by one of these officers, and not less than two of the directors; which certificate must state that such authority remains unrevoked and unchanged. If the company have no seal, the extract should be certified as correct by a notary public, or other competent officer under his seal. When a resolution is adopted at a special meeting of directors, it must be shown that all had notice of the time and place of such meeting, and that a quorum assented to the resolution.*

8. The indorsement of all the joint holders or co-trustees, executors, administrators, guardians, or other fiduciaries will be required on drafts, and in the execution of a power to a third party to collect, all must join. In case of the death of either, the survivors will be recognized as having full authority, upon due proof of such death and survivorship.†

JAMES GILFILLAN,
Treasurer U. S.

Approved January 1, 1881:

WILLIAM LAWRENCE,
Comptroller.

Approved:

JOHN SHERMAN,
Secretary of the Treasury.

* See Safford & Co.'s case, *ante*, 291, 292.

† As to indorsement of drafts by partners, or when all the partners are deceased, see *ante*, Rhawn's case, 109; Moyer's case, 116-125; Pierce's case, 136. As to survivorship, see 2 Lawrence, Compt. Dec.; Bond-Trust case, 200; Bond-Continuance case, 217; Trustee-Survivorship case, 231; Bond-Assignment case, 246.

When a draft is payable by the Government to parties named as trustees, and all die, the draft can only be paid, as a general rule, to the *successors in the trust*, appointed by the proper court, or other competent authority, and not to the executor or administrator of a deceased trustee. (Perry on Trusts, secs. 287, 288.)

As to drafts payable to an officer who dies, see Penn Yan case, 2 Lawrence, Compt. Dec., 40.

FORMS PREPARED BY THE FIRST COMPTROLLER.

1. Form of power of attorney to collect money due on draft to an individual.
2. Form of power of attorney to collect money due on draft to partners.
3. Form of power of attorney to collect money due on draft to a corporation.

FORM 1782.

Power of Attorney to Collect Money due on Draft to an Individual.

KNOW ALL MEN BY THESE PRESENTS, That I, ———, of [residence], of the county of ——— and State of ———, do hereby make, constitute, and appoint ———, of [residence], my true and lawful attorney, for me and in my place and stead, to indorse my name on United States Treasury draft No. ———, dated ———, 18—, for ——— dollars, issued on [kind of] warrant No. ———, and to receive and receipt for the money, giving my said attorney full power to do everything whatsoever, necessary under the statutes or executive regulations, as fully as I could do if personally present, hereby ratifying and confirming all that may be done by my said attorney by virtue hereof.

In witness whereof, I have hereunto set my hand, the ——— day of ———, 188—. ———. [SEAL.]

Signed in the presence of—

———. ———.
———. ———.
[Two witnesses.]

STATE OF ———, }
County of ———, } ss:

Be it known, That on the ——— day of ———, 188—, before me, ———, personally appeared ———, to me personally well known to be the identical person named in the foregoing power of attorney, who, in my presence, subscribed and acknowledged the said power of attorney to be his act and deed; and I do hereby certify that the said power of attorney was read and fully explained to the said ——— at the time of acknowledgment, and that he then declared that he fully understood the same and was satisfied therewith.

In testimony whereof, I have hereunto set my hand and affixed my ——— seal, the day and year aforesaid.

To be acknowledged before an officer having authority to take acknowledgment of deeds.

This instrument must be signed in the presence of two persons, who must sign their names as witnesses.

The residence of both parties must be distinctly stated.

The indorsement by the attorney:

[Name of payee.] ———,
By ———, Attorney-in-Fact.

FORM 1782½.

Power of Attorney to Collect Money due on Draft to Partners.

KNOW ALL MEN BY THESE PRESENTS, That the copartnership under the name and style of ———, and doing business in [the city or county], do hereby make, constitute, and appoint ———, of [residence], our true and lawful attorney, for us and in our copartnership name, place, and stead, to *indorse United States Treasury draft No. ———, dated ———, 18—, for ——— dollars, issued on [kind of] warrant No. ———, and to receive and receipt for the money, giving our said attorney full power to do everything whatsoever necessary, under the statutes or executive regulations, as fully as the said copartnership could do if personally present, hereby ratifying and confirming all that may be done by our said attorney by virtue hereof.

Witness the name of the said copartnership, this ——— day of ———, 188—.

By ———,
A Member of said Copartnership.
[No seal.]

Signed in the presence of—

———. ———.
———. ———.
[Two witnesses.]

STATE OF _____,
County of _____, } ss:

Be it known, that on the _____ day of _____, 188—, before me, _____, personally appeared _____, a member of said copartnership, to me personally well known to be such, and who, in my presence, signed the copartnership name to the foregoing power of attorney, and acknowledged the said power of attorney to be the act of said copartnership firm; and I do hereby certify that the said power of attorney was read and fully explained to the said _____ at the time of acknowledgment, and that he then declared that he fully understood the same and was satisfied therewith.

In testimony whereof, I have hereunto set my hand and affixed my _____ seal, the day and year aforesaid.

Indorse thus: [Name of payee.]
By _____, Attorney-in-Fact.

- The following instructions must be particularly observed and complied with, viz:
- 1st. The power of attorney should be executed in the copartnership name.
 - 2d. The signature must be made in the presence of two witnesses.
 - 3d. The place of business of the firm must be distinctly stated in the body of the instrument.
 - 4th. To be acknowledged before an officer having authority to take acknowledgment of deeds.

FORM 1782½.

Power of Attorney to Collect Money due on Draft to a Corporation.

KNOW ALL MEN BY THESE PRESENTS, That _____, president of _____, a corporation duly organized under the laws of the State of _____, and having an office for the transaction of business in the city of _____, acting for and on behalf of said corporation, and by virtue of an order and authority from the same, a copy of which is hereto attached, do hereby make, constitute, and appoint _____, of [residence], the true and lawful attorney for said corporation, authorizing him to indorse* for it the United States Treasury draft No. _____, dated _____, 188—, for _____ dollars, issued on _____ warrant No. _____; and the said attorney is also authorized to receive and receipt for the money or draft aforesaid, and to do everything whatsoever necessary, under the statutes or regulations, as fully as I could do if personally present, hereby ratifying and confirming, for and in behalf of the said corporation, all that may be done by said attorney by virtue hereof.

In virtue whereof, I have hereunto set my hand and the corporate seal, this _____ day of _____, 188—.

[Corporate Seal.]

Signed and sealed in the presence of—

[Two witnesses.]

STATE OF _____,
County of _____, } ss:

Be it known that on the _____ day of _____, 188—, before me, _____, personally appeared _____, to me personally well known as the identical person named in the foregoing power of attorney, and who, in my presence, subscribed and acknowledged the said power of attorney to be his act and deed; and I do hereby certify that the said power of attorney was read and fully explained to the said _____ at the time of acknowledgment, and he then declared that he fully understood the same and was satisfied therewith.

In testimony whereof, I have hereunto set my hand and affixed my _____ seal, the day and year aforesaid.

The following instructions must be observed, viz:

- 1st. There must be attached to this instrument a properly-authenticated copy of the vote or order of the board of directors authorizing the party signing to bind the corporation, and the corporate seal must be attached.

2d. This power of attorney must be executed in the presence of two witnesses.

3d. To be acknowledged before an officer having authority to take acknowledgment of deeds.

4th. A resolution in the form annexed, or one substantially the same, should be adopted by the corporate body, and a certified copy attached.

Resolved, That ———, the President of ———, be, and he is hereby, authorized to indorse and collect for and on behalf of that corporation any United States Treasury draft issued in payment of any claim or demand of the said corporate body, to receive and receipt for the same, or any moneys payable by reason of such draft, and to do all things necessary under the laws of the United States, or under any regulation in this regard; and, further, that he be, and is hereby, authorized, for the purpose of such indorsement, receipt, and collection, to substitute any proper person, in writing under the corporate seal, as attorney-in-fact for him and for and in behalf of the said corporate body, and that the acts of such person in such regard shall have the same force to bind the said corporate body as if such indorsement and collection were made by the said President, under this authority or in his official capacity.

This is to certify that at a *regular* meeting of the board of directors of ———, duly held at ———, on the — day of ———, 188—, the foregoing resolution was adopted, and is now in full force.

Witness our hands and the corporate seal, this — day of ———, A. D. 188—.

————, *President*.
————, *Secretary*.

[Corporate Seal.]

It is recommended that resolutions be adopted only at *regular* meetings;† but when passed at a special meeting, the certificate may be as follows:

We certify that at a *special* meeting of the board of directors of ———, duly held at ———, on the — day of ———, at — o'clock — M., 188—, the foregoing resolution was adopted, and is now in full force.

And we certify that notice was duly given, personally, to all the members of the said board of directors of the said time and place of said meeting, and of the object thereof, for more than — days prior thereto, and in time to enable all to attend said meeting; and that at such meeting so held a quorum of all the members of said board was present and voted for the adoption of said resolution.

Witness, &c.

* Indorse thus:

[Name of payee.] ———,
By ———, *Attorney-in-Fact*.

† See Safford & Co.'s case, *ante*, 291, 292.

CHAPTER XII.

JURISDICTION OF THE AUDITORS AND THE COMPTROLLERS OF THE TREASURY OF THE UNITED STATES IN THE ADJUSTMENT OF PUBLIC ACCOUNTS.

[The following discussion is so able and instructive, and so pertinent to the subject of this Appendix, that it is thought proper to insert it *in extenso* :]

TREASURY DEPARTMENT,
Second Comptroller's Office, February 10, 1851.

PHILIP CLAYTON, esq., *Second Auditor*.

SIR: I herewith return the papers connected with the claim of Alexis Coquillard, assignee of Joseph Bertrand, which claim had been disallowed by you, and an appeal taken to this office.

The allowance of the claim having been urged upon this office in a

written argument of able counsel, on the ground that the approval of the claim by the Commissioner of Indian Affairs was of binding authority on the accounting officers, and could not be disregarded by them without invading the just powers of the President and the Secretary of the Interior, both of whom the Commissioner is alleged to represent in his action on the claim; I have thought it necessary to examine somewhat fully into the respective jurisdictions of these several officers over the subject of claims on the Government. The importance of the subject of inquiry will account for the unusual length of the opinion which accompanies the papers returned.

You will perceive that I concur with you in disallowing the claim, and affirm your decision.

Very respectfully,

HILAND HALL, *Comptroller.*

OPINION.

TREASURY DEPARTMENT,

Second Comptroller's Office, February 10, 1851.

Alexis Coquillard, as assignee of Joseph Bertrand, having presented a claim to the Second Auditor, it has been disallowed by him, and an appeal taken to the Second Comptroller. The claim is founded on a written instrument purporting to have been signed by eighteen Indians in the presence of four witnesses. The writing is of the following tenor:

“CARRY MISSION RESERVATION, August 10, 1837.

“We, the undersigned chiefs and headmen of the Pottawatomie tribe of Indians, hereby certify that we have examined and had explained to us the account of Joseph Bertrand, senior, against us, and against the Indians of our respective bands, and are satisfied that the accounts are correct, and that the Indians of said tribe are honestly indebted to the said Joseph Bertrand in the sum of *five thousand two hundred and twenty-nine dollars* and three cents, which amount we hereby request the agent of the United States to pay to the said Joseph Bertrand.”

Accompanying the writing are the affidavits of four persons, whose names appear upon it as witnesses, to the effect that the chiefs and headmen whose names are appended to the instrument, signed it by their marks, fully understanding the purport and object of it. There is also proof that the claim has been duly assigned by Bertrand to the claimant, Coquillard.

This is all the evidence. But if proof were adduced that the consideration for which the instrument was executed was a just indebtedness of the Pottawatomie tribe to Bertrand, and also that the Indians who executed it were headmen and chiefs, who had competent authority to bind the tribe by such an obligation, such additional evidence would not alone, in my opinion, authorize the accounting officers to admit the claim.

The instrument thus authenticated would at most be but evidence of a debt in favor of the claimant against the Pottawatomie tribe of Indians, with perhaps a request of the tribe for the United States to pay it. There being no fund in the Treasury specifically appropriated to the payment of the debts of the Pottawatomie Indians, and no authority in the accounting officers to make the debt of the Indians a debt of the United States, their duty being merely judicial, it would manifestly be beyond their authority to direct the payment of it.

The claim has, however, been approved by the Commissioner of Indian Affairs, whose action upon it is shown by the following indorsement, viz:

“Respectfully referred to the Second Auditor for settlement. The request herewith, of the authorities of the Pottawatomie nation, for the payment out of their annuities of the claim of J. Bertrand, amounting to \$5,229.03, being hereby sanctioned, payment to be made to the person or persons legally authorized to receive the same, charging the appropriation for fulfilling treaties with the Pottawatomies. Act 30th September, 1850.

“L. LEA, *Commissioner.*

“OFFICE INDIAN AFFAIRS, 17th January, 1851.”

This approval of the claim by the Commissioner of Indian Affairs, it is insisted, in behalf of the claimant, is binding upon the accounting officers, making it their imperative duty to allow it, and to charge the payment to the appropriation designated by the Commissioner. It is claimed that the acts of the Commissioner are to be considered as the acts of the Secretary of the Interior; that the jurisdiction of the Secretary, who represents the President, is over Indian affairs supreme, at least so far as the accounting officers are concerned, and consequently, that whatever claim the Commissioner adopts and approves, it is the duty of those officers to allow, and that they have no power to inquire into the propriety or legality of the allowance.

In support of this view of the limited power of the accounting officers, a long and labored written argument has been filed with the Comptroller by the counsel for Coquillard, in which the opinions of several Attorneys-General are referred to and relied upon as sustaining the doctrine contended for.

The earnestness and ability with which the doctrine is set forth and maintained seemed to justify, and indeed to demand, a full and deliberate examination of it. If the counsel are right in their view of the respective powers of the Commissioner and the accounting officers, it is decisive in favor of the claim; if they are wrong, the question whether the approval of the Commissioner makes it a valid claim, re-

mains open for consideration in this office. It therefore seems necessary that this preliminary question of jurisdiction should be met and decided.

The following extract from the argument of the counsel shows the ground on which the authority of the Commissioner is maintained:

“As the law has given the Commissioner of Indian Affairs *exclusive* jurisdiction over all matters relating to Indian affairs, it follows, *ex vi termini*, that every decision which he makes upon the matter, which is not reversed by the Secretary, is as much binding upon the accounting officers as if it had been made by the Secretary of the Interior himself. And the reason is this, because, as Judge Berrien says, *he is presumed always to act by the direction of the President*. The law makes it his *duty* so to act. It expressly requires the President and Secretary to prescribe the regulations which shall govern him. They have prescribed these regulations, and the Commissioner acts in all things in accordance with them. Suppose *they are in violation of law*, can the Second Auditor, or any other accounting officer, disregard or set them aside? Have the accounting officers *any power whatsoever* over the acts of the Executive? The very statement of the proposition shows how fallacious a contrary mode of reasoning must be.”

Now, I utterly deny that the Commissioner of Indian Affairs, the heads of the Departments, or even the President himself, has any such power over the accounting officers as is claimed by the counsel. On the contrary, I maintain that when an account or claim comes before the accounting officers for settlement or allowance, by whomsoever it may have been recommended, they have not only the power, but that it is their imperative duty, from which they cannot escape without a violation of their official oaths, to inquire into its legality, and if they deem its allowance illegal to reject it. I further maintain that in the system of accountability prescribed by our laws, the authority to judge of the legality of expenditures made by or under the direction of the heads of Departments, was conferred on the Auditors and Comptrollers with the design and intention that it should be exercised, and should operate as a check upon unnecessary and improvident expenditures.

I admit that the doctrine insisted on by the counsel in this case does receive apparent countenance from the language used in an opinion of Attorney-General Berrien, in another of Attorney-General Butler, and more especially in an opinion of Attorney-General Johnson, which is in the following words:

“ATTORNEY-GENERAL'S OFFICE, 19th April, 1849.

“SIR: The opinion of the Secretary of the Interior directing the claim of H. Laselle for \$2,224 $\frac{75}{100}$ against the Miami nation of Indians to be paid, is, in my judgment, *binding upon all the subordinate officers by whom the account is to be audited and passed*. This has been the practice of the Government from its origin, and is as well authorized

by the law organizing the Departments, as it is absolutely necessary to the proper operation of the Government.

"I deem the point so clear that I feel it to be unnecessary to refer to opinions upon the question given at different times by this office.

"I have the honor to be, &c.,

"REVERDY JOHNSON.

"Hon. W. M. MEREDITH,

"*Secretary of the Treasury.*"

I venture to say, in the outset, that this opinion, put forth with so much confidence, is utterly untenable by either argument or authority; that there has been no such continued practice of the Government as the opinion refers to—that the law organizing the Departments gives no countenance whatever to such a doctrine—and that the weight of authority of former Attorneys-General, is altogether different from what the opinion indicates.

The leading idea which seems to pervade the argument of the counsel in this case, as well as that of Attorney-General Johnson, appears to be that there *must be*, and therefore is, some lurking, undefined power in the heads of Departments, derived from the President, which entitles them to control the acts of all officers of the Government, whose grade and rank are deemed inferior to theirs. I do not understand that there is any such Executive power.

It is one of the fundamental principles of our Government that the President, like any other individual, is responsible to the laws. He can no more do an illegal act with impunity than any other citizen. That his instructions to an inferior executive officer to do an act not authorized by law, will be no justification to such officer for doing it, is the well-known settled law of the land. Instances are numerous in which such inferior officers have been made liable as trespassers, though acting under the express orders of the Executive Departments. (*Little vs. Barveme*, 2 Cranch's R., 170; *Tracy vs. Swartwout*, 10 Peters, 280.) It must, therefore, be very apparent, that the power of the Executive over inferior officers is not necessarily to be considered as unlimited.

The Constitution indeed makes it the duty of the President to "take care that the laws be faithfully executed;" but that does not confer on him the power to perform duties himself, or by his agents, the heads of Departments, which the law has specially confided to other inferior officers. Thus, it will not be pretended that the head of a Department, or the President, could control the judicial acts of one of the judges of the circuit court of the District of Columbia; and his authority over the official acts of a justice of the peace for the District would be equally powerless. The power of the President, or the head of a Department, representing him, over the acts of an officer does not depend upon the

supposed rank or grade of the officer, but *upon the law* conferring authority on such officer.

The Supreme Court, in the case of *Kendall vs. The United States* (12 Peters' R., 610), use the following language in regard to the power of the Executive:

"The executive power is vested in a President; and, as far as his powers are derived from the Constitution, he is beyond the reach of any other Department, except in the mode prescribed by the Constitution through the impeaching power. But it by *no means* follows that every officer in *any* branch of that Department is under the exclusive direction of the President. Such a principle, we apprehend, is not, and certainly cannot be, claimed by the President.

"There are certain political duties imposed upon many officers in the Executive Department, the discharge of which is under the direction of the President. But it would be an alarming doctrine, that Congress cannot impose upon any executive officer any duty they may think proper, which is not repugnant to any rights secured and protected by the Constitution; and his duty and responsibility in such cases grow out of and remain subject to the control of the law, and not to the direction of the President."

The question, then, whether the head of a Department (who, within the proper sphere of his Department, is, I admit, presumed to exercise the powers of the President) is authorized to control the action of the accounting officers in the adjustment of claims, is to be determined not by any vague notions of undefined Executive power, but by the laws of Congress applicable to the duties of those officers.

The acts in force which provide for the settlement of public accounts are those of September 2, 1789, and March 3, 1817.

The act of September 2, 1789, which is entitled "An act to establish the Treasury Department," declares that the officers of the Department shall be a Secretary of the Treasury, to be deemed head of the Department; a Comptroller, an Auditor, a Treasurer, a Register, and an Assistant Secretary of the Treasury.

It is made the duty of the Auditor (sec. 5) "to receive all public accounts, and after examination to certify the balance, and transmit the accounts, with the vouchers and certificate, to the Comptroller for his decision thereon;" and it is provided "that if any person whose account shall be so audited be dissatisfied therewith, he may, within six months, appeal to the Comptroller against such settlement."

It is made the duty of the Comptroller (sec. 3) "to examine all accounts settled by the Auditor, and certify the balances arising thereon to the Register;" and the duty of the Register (sec. 6) is declared to be "to receive from the Comptroller the accounts which shall have been *finally adjusted*, and to preserve such accounts with their vouchers and certificates."

By the further provisions of the act, which it is unnecessary to recite in detail, the Register was to furnish the Secretary with copies of the Comptroller's certificates of balances, and the moneys found due were to be drawn from the Treasury by warrants from the Secretary, countersigned by the Comptroller, and recorded by the Register.

This completed the system for the adjustment and payment of public accounts. They were first to receive the examination and approval of the Auditor, and were then to be revised by the Comptroller. A dissatisfied claimant might appeal from a decision of the Auditor to the Comptroller; but no appeal is provided for from the Comptroller. On the contrary, the accounts after receiving his revision are declared to have been "*finally adjusted*."

The act of March 3, 1817, entitled "An act to provide for the prompt settlement of accounts," provides (sec. 2) "that from and after the third day of March next, all claims and demands whatever, by the United States or against them, and all accounts whatever in which the United States are concerned, *shall be settled and adjusted in the Treasury Department*."

It is difficult to conceive how, in the face of this statute, declaring that accounts shall be settled and adjusted in the Treasury Department, a Secretary of War or of the Interior is to acquire an authority over their settlement and adjustment.

The act of 1817 preserves the system of auditing and revision of accounts established by the act of 1789, adding to the officers provided for by that act four Auditors and one Comptroller. All accounts arising in the War and Navy Departments are to be examined by the Second, Third, and Fourth Auditors, and revised by the new or Second Comptroller; and all other accounts are to be under the jurisdiction of the First and Fifth Auditors and First Comptroller. The duties in regard to the preservation of accounts that have been adjusted, which by the act of 1789 had been conferred on the Register, were, by this act, so far as it regarded the accounts arising in the War and Navy Departments, transferred to the Auditors who were charged with their settlement; and the act (sec. 5) makes it the duty of such Auditors "to receive from the Second Comptroller the accounts which shall have been *finally adjusted*, and to preserve such accounts, with their vouchers, certificates," &c.

By the act of February 24, 1819, the settlement of accounts arising out of Indian affairs, with the exception of those appertaining to Indian trade, was transferred from the Fifth to the Second Auditor, who, in the language used in former acts, is directed "to receive from the

Comptroller the accounts that shall have been *finally adjusted*, and to preserve such accounts, with their vouchers and certificates."

There are numerous acts of Congress in which special powers are conferred on others than the accounting officers, in a manner indicating very clearly the understanding of Congress, that but for such provisions the adjustments of the accounting officers would be conclusive.

Thus, by act of February 21, 1823, "the proper accounting officers of the Treasury" were authorized "to adjust and settle the accounts and claims of Daniel D. Tompkins, late governor of the State of New York, on principles of equity and justice, *subject to the revision and final decision of the President of the United States.*"

Again, by the act of March 1, 1823, in the settlement of accounts of persons remaining charged on the books of the Third Auditor with public moneys advanced prior to the first of July, 1815, "the proper accounting officers" were authorized to admit credits on such evidence as would be received in courts of justice; and it was provided that whenever, in the settlement of such accounts, a difference of opinion should arise between the accounting officers, the case should be referred to the Secretary of War, whose decision should be conclusive. The accounts which were thus to be settled had all arisen in the War Department, and the Secretary, according to the argument furnished in this case, ought to have had perfect control over these accounts, without any special provision to that effect. Congress do not appear to have so understood it, and the provisions conferring on the President the power of revision in the act for the relief of Governor Tompkins, and on the Secretary in this act, seem quite conclusive that without such provisions they would have had no such power. Many other acts of legislation of a similar character might be referred to, but I deem it unnecessary to pursue this branch of the argument further. The language of the acts of Congress relative to the duties and powers of the accounting officers of the Treasury, appears to me to establish, beyond doubt or controversy, so far as the executive officers of the Government are concerned, their exclusive and final jurisdiction in the settlement of claims and accounts.

If the power of the President and heads of Departments to control the accounting officers in the allowance of accounts were to be decided upon the authority of the opinions of former Attorneys-General, such power would not be sustained, as I shall now proceed to show.

In 1823 Congress passed an act directing "the accounting officers of the Treasury Department to settle and adjust the account of Joseph Wheaton while acting in the Quartermaster's department, upon the

principles of justice and equity.” Mr. Wheaton was dissatisfied with the adjustment of the accounting officers and applied to the President for relief, who referred his application to the Attorney-General. Mr. Wirt, who then held the office of Attorney-General, examined the subject fully, and under date of October 20, 1823, gave an elaborate opinion that the President had no power to interfere in the matter. The result of Mr. Wirt’s examination is thus summed up by him:

“My opinion is, that the settlement made of the accounts of individuals by the accounting officers appointed by law is final and conclusive, so far as the executive department of the government is concerned. If an individual conceives himself injured by such settlement, his recourse must be to one of the other two branches of government—the legislative or judicial. If a balance be found against him, by the disallowance of credits which he deems just, he may refuse payment and abide a suit; in which case, he will have the benefit of the opinion of a court and jury. If a balance be found in his favor, but smaller than he thinks himself entitled to, his appeal is to Congress, where the representatives of the people will pass upon his claim.” (Opinions of Att’ys-Gen., 471, 475. [1 Op. Att.-Gen., 629.])

On the 17th of January, 1824, on the application to the President, by Joshua Wingate, to have a sum passed to his credit in the settlement of his accounts at the Treasury, Mr. Wirt, referring to his former opinion in the case of Major Wheaton, advised the President that he had no right to interfere in the settlement of the accounts. (Opinions, *Ib.*, 479. [January 13, 1824; 1 Op. Att.-Gen., 636.])

Again, on the 27th of July, 1824, on reference to him by the President of an application by Elbert Anderson to have a credit allowed him in the settlement of his accounts as Army contractor, Mr. Wirt reaffirmed his former opinion, as follows:

“I beg leave to call your attention to an elaborate opinion which I had the honor to address to you on the 20th October last, in the case of Major Joseph Wheaton, who sought to draw from you some instructions to the accounting officers relative to the settlement of his accounts. In that case, after reviewing fully the organization of the accounting department; after scanning, with care, the language of our laws in relation to the operations of that department; after looking at the nature of the office of the President of the United States, the character of the duties devolved upon him, and the utter impossibility of his sitting in appeal over the accounting officers of the government, or superintending and directing their operations,—I gave it as my opinion that he had nothing to do with the settlement of public accounts, either in the form of direction to the accounting officers *a priori*, or revision and reversal *a posteriori*; that his interference with this business, so far from being required by law, *would be a usurpation on the part of the President* which the accounting officers would not be bound to respect, except it were (as in the case of Governor Tompkins) expressly ordered by the particular law to act under the direction and orders of the President.” (Opinions of Att’ys-Gen., 506. [1 Op. Att.-Gen., 678.])

Subsequently, on the 19th February, 1825, on applications of General Hull and of Colonel McKenney to the President, in relation to their several accounts, Mr. Wirt, referring to his former opinion in the case of Major Wheaton, advised the President that the accounts were matters which belonged exclusively to the accounting officers of the Government, and with which he had nothing to do. (*Ibid.*, 528. [1 Op. Att.-Gen., 705, 706.])

The next opinion in the order of time which appears to have a bearing upon the question under consideration, is that of Attorney-General Berrien, dated December 4, 1829, and which is relied upon as sustaining the position assumed by the counsel for the claimant in the present case. (*Ibid.*, 740. [2 Op. Att.-Gen., 303.])

The question submitted to Mr. Berrien grew out of a claim of General Parker for double rations, and for fuel and quarters as adjutant and inspector-general of the Army. The claim for *double rations* had been rejected by the accounting officers, and the judgment of the Supreme Court had also been against the claim. (1 Peters' Reports, 393.)

It had been presented again to the accounting officers in the shape of an allowance for *fuel and quarters*, rejected by the Third Auditor, and an appeal taken to the Comptroller. When Mr. Hill was appointed Comptroller, he found the account in the office, with an indorsement of his predecessor upon it, which he was disposed to consider as an allowance of the claim. The Third Auditor declined to treat the claim as adjusted, and refused to pass the amount to General Parker's credit. Mr. Hill, through the Secretary of War, asked the opinion of the Attorney-General, whether the decision of the late Comptroller was final or might be reopened; and, if reopened, whether General Parker was entitled to the allowance claimed?

Mr. Berrien thought the facts stated were not sufficient to enable him to determine whether the account had been finally adjusted by the Comptroller or not; but he held, that if so adjusted the account was subject to be reopened by the Secretary of War acting under the authority of the President. He derived this authority of the Secretary from the provision in the statute requiring him to issue requisitions for the balances certified to him by the Comptroller. "When the account has been settled and certified to the Secretary, he is then," says Mr. Berrien, "to issue his requisition for its amount; and unless he is a mere machine, or liable to the control of his own, or the subordinates of another department, he must be entitled, before he does so, to *review*, and if need be, to *reverse the decision of the Comptroller*."

As this is the only statute provision that has ever, to my knowledge, been cited as conferring the power of revision of public accounts on the head of a Department, it may be worth while to look more closely into it.

Mr. Berrien commences the above statement with a very important error of fact. He speaks of the *account* being settled and certified to the Secretary, as if, when he was called upon to issue the requisition he would have the *account* before him, and might look into it to ascertain whether it was proper to grant the requisition. But the statute makes no such provision. By the act of March 3, 1817, sec. 5, the *Auditor* receives from the Comptroller the accounts with the vouchers; and the Comptroller certifies to the Secretary (sec. 9), not the *account* that has been settled by him, but merely "*the balance arising thereon.*" The accounts are not, either in contemplation of law or in practice, sent to the Secretary. Surely, if Congress had intended to confer on him the power of looking into the accounts to determine the propriety of issuing requisitions, they would at least have furnished him with the means of doing so. By looking back to the act of 1789, it will be found that the Secretary of the Treasury, who was required to draw warrants for the balances found due by the accounting officers, was left in no better condition than the Secretary of War is at present, to judge of the propriety of the adjustment. By that act, the accounts and vouchers were to be transmitted by the Comptroller to the Register, and the only papers to be furnished the Secretary, from which he could grant requisitions, were *copies of the certificates of balances*, which copies were to be furnished him by the Register. (Sec. 6.) But additional light may, perhaps, be thrown on this matter by going still further back, to the foundation of our system of accounting; which was the ordinance of the old Congress, "for regulating the Treasury and adjusting the public accounts," adopted September 11, 1781. (3 Journals Cong., 666.) That ordinance provided for precisely the same officers that were constituted by the act of 1789, the head of the office in the ordinance being denominated Superintendent of Finance, instead of Secretary of the Treasury. The duties of the several officers were also similar. In fact, the act of 1789 only continued in operation the old system that had been in existence under the ordinance from 1781. By that ordinance, the Comptroller was to transmit the account when finally adjusted to the Register, to be entered of record with this further provision, viz: "*And a note of the balance shall be certified by the Comptroller to the Superintendent of Finance, to make out the proper warrant for payment.*" It seems very clear, that under this ordinance the issuing the warrant for payment was deemed a necessary

consequence of the final adjustment of the account, and that the act of issuing it was merely ministerial, conferred on the Superintendent to guard against irregular drafts on the Treasury, which might be apprehended if the same officers who settled the accounts were also allowed to draw warrants for their payment.

Under our system of paying claims out of specific appropriations, I should think the Secretary would be justified in refusing a requisition, if he were satisfied there was no appropriation to which it could be properly charged; and if there be any other ground on which payment of an adjusted claim might be legally refused, I should suppose the Secretary, on discovering it in any case, might properly decline to issue the requisition. This, I am disposed to think, was the extent of the power designed to be conferred on him. But, if it were intended he should exercise a discretion in regard to the issuing of requisitions, to be governed by his opinion of the justice and propriety of the allowances, and thus possess an absolute negative upon the payment of accounts, it would not by any means follow, as Mr. Berrien seems to suppose, that he might go the long stride further, of reversing the allowance and readjusting the accounts. If Congress had designed that the power of revision of the settlements of the Comptrollers should be exercised by the heads of the Executive Departments, they would assuredly have provided for an appeal from his decisions, as they did to him from those of the Auditors. But, when the law expressly provides that all accounts in which the United States are concerned "shall be settled and adjusted *in the Treasury Department*," when the adjustments of the Comptroller are declared to be final, and not an intimation is found in any act of Congress that there could be any appeal from his decisions, or any revision of them, it would be adopting a latitudinarian construction, which, I apprehend, the learned Attorney-General would not, on reflection, feel bound to maintain, that such power of revision is, nevertheless, conferred on the Secretary of War, by the mere authority to draw requisitions in payment of balances which have been certified to him from the office in which the accounts have been adjusted.

We next come to an opinion of Attorney-General Taney, given April 5, 1832, on reference to him by the President, of a memorial of General Taylor, in which he enters into a very full examination of the question, whether the settlement of an account, made by the proper accounting officers of the Government, could be reviewed by the President. The result of his examination is summed up in the concluding part of his opinion, as follows:

"These laws, as well, indeed, as those which preceded them on the same subject, appear to me not to contemplate any appeal to the President;

and I think, therefore, that the decision of the Comptroller in this case is conclusive upon the executive branch of the government, and that the President does not possess the power to enter into the examination of the correctness of the account, for the purpose of taking any measures to repair the errors which the accounting officers appointed by law may have committed. The party who supposes that justice has not been done to him must seek relief in court when a suit is brought against him, or may bring his claims to the consideration of Congress; and these, in my opinion, are the only means of redress left to General Taylor if the accounting officers have erred in their decision." (Opinions, 871-2. [2 Op. Att.-Gen., 509.])

On the 31st of May, 1832, in the case of General Gratiot; and again, on the 18th day of December following, in the case of Mr. Hogan, on reference to him by the President, Mr. Taney, referring to his former opinion in the case of General Taylor, on each occasion advised the President that he had no power to interfere in any way in the settlement of public accounts. (Opinions, 877 and 895. [2 Op. Att.-Gen., 518, 544.])

So much for the opinions of the present Chief Justice of the Supreme Court.

The next opinion, in the order of time, is that of Attorney-General Butler, which is recited and relied upon by the counsel in the written argument before mentioned.

This opinion of Mr. Butler, which is dated May 17, 1834, was given in reference to the same claim, which some years previously had elicited the before-mentioned opinion of Mr. Berrien. (*Ibid.*, 956. [2 Op. Att.-Gen., 652.])

Subsequent to the time of Mr. Berrien's opinion there had been no further approval of the claim by the Comptroller, but General Parker had succeeded in procuring sundry indorsements upon his papers of Secretaries of War, which were more or less favorable to the allowance of the claim; and General Cass, then Secretary of War, requested the opinion of the Attorney-General, whether the acts and decisions of the former Secretaries and Comptrollers were sufficient to authorize and require the accounting officers to settle and allow the account.

Mr. Butler, apparently without any knowledge of the previous opinions of Mr. Wirt and Judge Taney, and manifestly without examination of the question, treated Mr. Berrien's opinion as the law of the case, and held that the doings of the former Secretaries of War were sufficient to authorize and require the accounting officers to settle and allow the claim.

This opinion was not, however, carried into effect, but was successfully resisted by Mr. Thornton, the then Second Comptroller. On being furnished with the opinion by the Secretary of War, Mr. Thornton addressed a letter to him, under date of June 5, 1834, embodying at

length the two leading opinions of Attorneys-General Wirt and Taney, before referred to, and protesting that the Secretaries of War had no power to allow the claim; that it was unfounded in law, and ought not to be admitted.

The attention of the President having been called to the matter, he, on the 8th of July, 1834, transmitted to the Secretary of War an order as follows, viz:

"The Secretary of War will suspend further proceedings on the claim of General Parker until I return. In the meantime he will call on the Attorney-General for a full consideration of the whole case.

"ANDREW JACKSON.

"July 8, 1834."

It does not appear that the Attorney-General gave any further opinion on the subject. The presumption is that he became satisfied that the position taken by the Comptroller was correct; for no further attempts appear to have been made to coerce him into the allowance of the claim, and General Parker at the next session presented his petition to Congress for relief. The petition having been referred to the Committee of Claims of the House of Representatives, an unfavorable report was made upon it February 2, 1835, by Mr. Banks, from that committee, that committee giving a history of the claim, with copies of the indorsements of the Secretary of War, the letter of Mr. Thornton, and other papers connected with the claim thereto appended. (See Reports of Committees, 2d session, 23d Congress, No. 77.)

That Mr. Butler afterwards became satisfied that the opinions of Mr. Berrien and himself were erroneous, is shown by a subsequent opinion given by him in another case, which appears wholly inconsistent with those opinions.

By the provision of the post-office act of 1825 the Postmaster-General was to receive the income and make the expenditures of the Post-Office Department, and to render an account of the same to the Treasury, "*to be adjusted and settled as other public accounts.*" In a labored opinion of Mr. Butler, given October 10, 1835, in the case of Stockton and Stokes, it became important to inquire and determine the extent of the Postmaster-General's accountability under the provisions of that act, the extent of his accountability being measured by that which governed the settlement of other public accounts at the Treasury. After considering the matter with care, Mr. Butler did not come to the conclusion that, because the Postmaster-General was the head of a Department, and represented the Executive in the management of the affairs of the post-office establishment, the accounting officers had no power to in-

quire into the legality of his acts. He sums up his conclusions on that point as follows:

“Whenever the accounting officers can see by the face of the account, or by the vouchers produced in its support, that moneys have been paid by the Postmaster-General in cases or for purposes not authorized by law; and, still more, when they perceive that such payments were directly contrary to law, it will be their duty to disallow them, and to hold the Postmaster-General a debtor to the Government for the amount. In the case of moneys paid for additional allowances, a rule is given by the act of Congress, which the accounting officers may and ought to apply to every credit of this nature claimed in the account. If they discover that the rule prescribed by law has been violated in the allowance, I do not see how they can pass the payment to the credit of the Postmaster-General, without a palpable dereliction of duty.” (Opinions, 1024. [3 Op. Att.-Gen., 23.])

I have now noticed all the opinions of Attorneys-General that I am aware of, having reference to the present subject of inquiry, and I think it must be admitted that their authority is decisive against the powers of the heads of Departments to interfere in any way whatever with the accounting officers on the adjustment of claims and accounts.

The power of the President and heads of Departments to direct or review the decisions of the Comptrollers of the Treasury will, I apprehend, be also found to be altogether unsustained by practice.

During the administration of Mr. Monroe and Mr. Adams, the doctrine so clearly and explicitly stated by Attorney-General Wirt appears to have been uniformly adhered to. General Jackson, who was not apt to shun responsibility that belonged to him, fully acknowledged his want of authority over the accounting officers in the settlement of claims. Peebles and Gorham, contractors for supplies in the Subsistence department, being dissatisfied with the final adjustment of their account by the Second Comptroller, applied to the President for relief, who referred the application to the Secretary of War, by whom, through the Commissary-General, a report was made July 1, 1835. The opinion of President Jackson, in his own original autograph, is found indorsed on the papers in the Third Auditor's Office, as follows:

“The report made—Attorney-General's opinion referred to. The decision of the Second Comptroller is final, over whose decisions the President has no power, except by removal. The Secretary of War will make known this decision to Mr. Peebles. A. J.”

It will be perceived that this decision, in July, 1835, was more than a year after Mr. Butler's opinion in General Parker's case; and that General Jackson, instead of recognizing that opinion as law, recurs back to the earlier opinion of Judge Taney, which fully sustains the doctrine of his decision, that he had no power over the accounting officers except that of removal from office.

The practice of Mr. Van Buren's administration is understood to have corresponded entirely with that of General Jackson on this subject.

In October, 1841, during Mr. Tyler's administration, application was made to him by Clements, Bryant & Co., to have the opinion of the Attorney-General requested in regard to a decision of the Second Comptroller on their claim. Mr. J. C. Spencer, then Secretary of War, to whom the matter was referred, in a report to the President, expressed his full approbation of the opinion of Attorney-General Wirt, of October 20, 1823, and advised the President that "the accounting officers of the Treasury constituted a judicial tribunal," from whose decision there was no appeal to the President or the Secretary of War; that, as the Comptroller had not asked the opinion of the Attorney-General, and would not be bound to regard it when given, the request ought to be denied. The report of the Secretary of War was approved by the President, and both the report and approval were printed in the form of a circular for the information of claimants and public officers.

During Mr. Polk's administration, an application was made to him to interfere with the adjustment of the same claim, which he declined to do, making his indorsement on the papers, as follows:

"I have considered the application in the case to open the accounts of Bryant, Clements & Co., and decline to interfere upon the ground that Congress has expressly given the authority to settle the claims to the accounting officers of the Treasury Department, and that I have no right to control these officers in the performance of their duty. August 9, 1845.

"J. K. POLK."

I am not aware that the present Chief Magistrate of the United States, or any of the heads of Departments, claim the power of direction or revision of public accounts, or have indicated any desire to exercise such power.

I cannot but feel that the argument and authorities which have already been adduced in favor of the conclusive jurisdiction, so far as the Executive officers of the Government are concerned, of the accounting officers of the Treasury over public accounts, must be entirely convincing and satisfactory. Yet the fact that the doctrine has so recently been assailed with great confidence in an official opinion of an Attorney-General, and that it is maintained in the present case with earnestness and ingenuity by able and learned counsel, must be my apology for pursuing the subject somewhat further.

It appears to have been a leading principle in the system of accounting established by the act of 1789, that the auditing and revision of accounts should be made by officers holding their appointments inde-

pendent of the heads of Departments, and wholly unconnected with the disbursements of the public moneys; it being deemed essential to the judicious and economical administration of the financial affairs of the Government, that the officers who directed an expenditure should not also judge of its legality. Hence, the adjustment of accounts by the accounting officers was declared to be final, and was designed to be so.

This system was, however, broken in upon in some degree, when the superintendence of the collection of the revenue, in consequence of the duty having become too burdensome to the Secretary of the Treasury, was, in 1792, transferred to the Comptroller. Under this arrangement, the Comptroller was sometimes called upon to revise accounts for expenditures which he had himself directed. This has, however, always been deemed a defect in the system requiring correction.

In December, 1834, when Mr. Woodbury was Secretary of the Treasury, he, in compliance with a resolution of the Senate, prepared and reported to that body a plan for the reorganization of the Treasury Department. In that report he speaks as follows of this anomaly in the system of accounting, and what was desirable in such a system:

“A legal and proper check in the passing of accounts is not now supposed to be had by the First Comptroller, in respect to some accounts which may occasionally, though seldom, grow out of any of his own previous decisions or directions, as superintendent of the customs; *and it is manifest, that no effectual check can ever exist in any case where the same officer authorizes the expenditure and audits or controls the audit of the accounts.*” (Senate Documents No. 6, page 5, 2d sess., 23d Congress. See also “An inquiry into the practicability of simplifying the system of public accounts, by P. G. Washington, Jan. 1832,” Ex. Doc., 2d sess., 24th Congress, No. 71.) This defect in respect to the duties of the First Comptroller has recently been corrected by transferring the superintendence of the collection of the revenue to the Commissioner of Customs.

In one branch of the Government, the practical operation of a system of accounting, which gave to the head of a Department the direction of the expenditures, and also the control of the audit of them, has been tested by experience. I refer to the Post-Office Department. It was, indeed, provided by the act of March 3, 1825, that the Postmaster-General should, “once in three months, render to the Secretary of the Treasury a quarterly account of all the receipts and expenditures in the Department, to be adjusted and settled as other public

accounts." But as all the payments were to be made by the Postmaster-General previous to their being submitted to the accounting officers, and as the examination of the accounts at the Treasury could not be speedily made, but in fact became several years in arrear, the accounting answered no useful purpose whatever. The power of the Postmaster-General over his expenditures was practically unchecked and unlimited.

The effect of this uncontrolled power of expenditure upon the financial management of the Department is well known. The expenditures became lavish and improvident in the extreme, not to say fraudulent and corrupt; and the Department was only saved from actual bankruptcy by a legislative examination and exposure of its affairs, and the subsequent appointment of a new and more economical and efficient head.

It seems to have been the concurrent opinion of legislators and statesmen of both political parties at the time, that the wasteful and extravagant expenditures of the Department were in a great degree chargeable to the want of that legal check upon its disbursements, which the system of accounting at the Treasury furnished to the other Departments of the Government.

On the 9th of June, 1834, the Senate Committee on the Post Office and Post Roads, who had been specially charged to examine into the condition of the Post-Office Department, made report by Mr. Ewing, their chairman, which was very unfavorable to the Department, and ascribed the derangement of its affairs "to the uncontrolled discretion exercised by its officers over its contracts and funds." Mr. Grundy and Mr. Robinson, constituting a minority of the committee, made a separate report less unfavorable to the Department, but recommended "that the Department be reorganized in such a way as to secure a proper degree of responsibility not only in the head, but in the subordinate branches of the Department; and for that purpose the auditing of the accounts and *the final adjudication of them*, and the disbursements of its moneys, should be confided to officers appointed by the President and Senate." (Senate Doc., 1st sess., 23d Cong., No. 422, pages 31 and 274.)

The attention of the President of the United States having thus been brought to the subject, he, in his annual message, in December, 1834, adopted the suggestions of the minority of the committee, and recommended that the Post-Office Department "be reorganized, with an auditor and treasurer of its own, appointed by the President, who should be branches of the Treasury Department."

The committee of the Senate, having further pursued their investigations during the recess of Congress, made their final report, by Mr. Ewing, their chairman, on the 27th of January, 1835. The report, after speaking of the numerous great abuses and evils which had grown up in the Department, proceeds as follows:

“They may be principally traced to the absolute and unchecked power which a single individual holds over the resources and disbursements, and all the vast machinery of the Department. The checks of various inferior officers upon each other are of no value, *when all are guided and controlled in their acts by one dominant will.*” * * *

The committee recommended “a change in the organization of the Department, so as to place the collection and the disbursement of its funds in different hands, and under the control of officers entirely independent of each other.” “That Department,” say the committee, “as at present arranged, is a dangerous anomaly in our system; and by whomsoever its concerns are hereafter to be conducted, its organization ought to be changed, so as to conform more nearly to that of the other great Departments of the Government.” (Senate Doc., 2d sess., 23d Cong., No. 86, p. 89.)

Mr. Kendall, who had become Postmaster-General, in his annual report of December 4, 1835, strongly urged a reorganization, by law, of the financial branch of the Department. After speaking of several defects in the then-existing system, he proceeds as follows:

“There is another feature in which the present organization of the Department is defective and unsafe. It is believed to be a sound principle, that public officers, who have an agency in originating accounts, should have none in their settlement. The War and Navy Departments are in general organized upon this principle. In the orders, contracts, and regulations of the heads of those Departments, or their ministerial subordinates, issued and made in conformity with law, accounts originate; the moneys are generally paid by another set of agents, but partially dependent on the heads of the Departments; *and the accounts are finally settled by a third set, who are wholly independent of them.* If from any cause an illegal expenditure be directed by the head of a Department, it is the duty of the disbursing agent not to pay the money; and if he does pay it, *it is the duty of the Auditors and Comptrollers to reject the item in the settlement of his account.* * * * The most important improvement required is to separate the settlement of accounts entirely from the Post-Office Department, and vest it in an Auditor appointed by the President, with the advice and consent of the Senate.” (Ex. Doc. No. 2, 1st sess., 24th Cong., pages 399, 400.)

In pursuance of the foregoing recommendations, the act of July 2, 1836, entitled “An act to change the organization of the Post-Office Department, and to provide more effectually for the settlement of the accounts thereof,” was passed; which act provided for a separate Auditor

for that Department, who was authorized to settle accounts accruing in the Department, subject to an appeal, by either the Postmaster-General or the claimant, to the First Comptroller, whose decision was to be final.

Having, I think, satisfactorily shown by reference to the several acts of Congress on the subject, that neither the President nor heads of Departments have any authority to direct or control the accounting officers in the adjustment of claims and accounts, and no authority to review their decisions, and that the jurisdiction of the accounting officers over such claims and accounts is final and conclusive upon all the executive officers of the Government, and was designed to be so; that such jurisdiction, with one or two ill-advised exceptions, has been generally acknowledged and vindicated by the law officers of the Government, and is also sustained by long-established practice; and that the public interest requires and demands that such jurisdiction should be preserved and maintained, I leave this branch of the subject without further remark.

I do not intend by anything that has been said to intimate that the accounting officers are not, in any case, to regard the action of the heads of Departments upon claims and expenditures. On the contrary, I admit and hold, that in all that large class of cases in which a legal discretion is committed to the head of a Department, either as such or as the proper organ of the President, the decision of such head of Department, within the limits of his discretion, would be binding upon the accounting officers. It would be binding on them, not because of any jurisdiction in the head of the Department over them in the adjustment of claims, but because their official duty requires them to admit and allow all claims which are legal, and the approval and direction of the head of Department being in such case by authority of law, would make the expenditure a legal one.

Thus, in the case of the present claim, if the Secretary of the Interior had indorsed upon it his approval, and direction to have it paid out of the appropriation for the payment of the annuities to the Indians, and the claim were thus presented to the accounting officers for settlement, the first inquiry for their consideration would be whether the Secretary had authority thus to direct the payment of the debt of the Indians out of the money appropriated by Congress in satisfaction of their annuities. If the accounting officers came to the conclusion that he had no such authority, it would be their duty to reject the claim. If they held that the direction of such payment was a matter within the authority of the Secretary, they would not inquire whether he had exercised his discre-

tion judiciously, but would regard his act as making the expenditure a legal one, at least to the extent of the real debt against the Indians.

The claim not appearing to have been acted upon by the Secretary of the Interior, it remains to be considered whether the approval and direction of the Commissioner of Indian Affairs makes it a valid one, upon the appropriation for the payment of the Indians' annuities.

It is insisted, in the argument of counsel before mentioned, that the Commissioner of Indian Affairs, by virtue of his office as such Commissioner, has authority to decide upon the legality and propriety of all claims arising in the Indian department, and that his decision upon such claims is of binding authority on the accounting officers. This power is, in the first place, claimed to have been specially conferred by the third section of the act of 1832, which directs the Commissioner to make "administrative examination" of all accounts and vouchers for claims and disbursements connected with Indian affairs, previous to his passing them "to the proper accounting officer of the Treasury for settlement."

It seems quite apparent that the Secretary of War, who, in obedience to the direction of the President, prescribed the regulations of 1836, and which are still in force, for conducting this examination, did not understand it as superseding the authority of the accounting officers over the claims. The "administrative examination" is treated throughout those regulations as being preliminary, and in aid of the examination which is subsequently to take place at the Treasury. Thus, by the first paragraph of the 5th regulation, it is provided, that when the Commissioner deems a claim to be "*illegal*," or contrary to the regulations or instructions, or improper and unjust, "he will withhold his sanction, and state his objection for the *consideration of the accounting officers*." By the second paragraph of the same regulation, the Commissioner is directed, after making an examination of the circumstances of any expenditure, "to annex such explanatory observations as may *the better enable the accounting officers to perform their duty*;" and the third paragraph provides that "where particular instructions authorizing the service or expenditure have been given, *and are necessary to a just decision of the matter, the proper extracts therefrom* will be transmitted by the Commissioner with the accounts."

These regulations appear to be entirely inconsistent with the idea that the examination of accounts and vouchers by the Commissioner, and his sanction or disapproval of them, was understood to constitute an allowance or disallowance, which was to be regarded as such by the accounting officers. The term "administrative examination" is be-

lieved never to have been understood as constituting a final adjustment of a matter, but to be applicable only to such preliminary examinations of accounts and expenditures as are made in the several bureaus of the Departments, for the purpose of promoting the due administration of the affairs under the direction of the bureau, and in aid of the subsequent examination by the accounting officers. Such examinations of accounts and vouchers have long been made in the several bureaus of the War Department, such as the quartermasters', the medical, the engineers', and other bureaus, and have never been claimed or recognized as having a binding authority on the accounting officers. That such is the meaning of the term "administrative examination," will be seen by reference to Regulations of the Army, 1825, paragraph 299; Regulations of 1841, quartermasters' and other administrative departments; Regulations of 1847, page 185, note; also Mayo's Treasury Department, Supplement, page 116 to 120.

It is further insisted by the counsel for the claimant that the Secretary of the Interior, succeeding to the powers of the Secretary of War, had *legal authority* to direct the payment of the claim out of the annuity appropriation; that the Commissioner of Indian Affairs, in approving and directing the payment of the claim, is to be considered as representing the Secretary of the Interior; and that the Commissioner consequently had all the power over the subject that might have been exercised by the Secretary. For that reason it is urged that the decision of the Commissioner made the claim *a legal one*, and that it therefore ought to be passed by the accounting officers.

Whether the power of the Commissioner over the subject-matter of this claim was co-extensive with that of the Secretary, must be determined by the laws and regulations.

The act of July 9, 1832, constituting the office of Commissioner of Indian Affairs, gave him the general management of Indian affairs and relations, "under the direction of the Secretary of War, and agreeably to such regulations as the President might from time to time prescribe." By the subsequent act, passed June 30, 1834, entitled "An act to provide for the organization of the department of Indian Affairs," the duties and powers of the officers of the Department were more particularly defined, and by the 17th section the President was authorized "to prescribe such rules and regulations as he might think fit for carrying into effect the various provisions of the act." This act, as well as the regulations of the President for carrying it into effect, contains many special provisions by which some powers are conferred on the President, some on the Secretary of War, and others on the Commissioner.

The authority of the Commissioner to direct the payment of the present claim, if it exists, must be found in the laws and regulations in regard to the payment of Indian annuities; for it is out of the annuities due the Indians by treaty, and out of the appropriation made by Congress for the payment of them, that the money is directed to be taken.

From the examination which I have made of the subject, I am of opinion that the discretionary power of determining the manner in which Indian annuities shall be paid, within the limits in which there is room for discretion, has by the laws and regulations been committed to the head of the Department, and not to the Commissioner.

By the 11th section of the act of June 30, 1834, it is provided "that the payment of all annuities or other sums stipulated by treaty to be made to any Indian tribe, shall be made to the chiefs of such tribe, or to such person as said tribe shall appoint; or if any tribe shall appropriate their annuities to the purpose of education, or to any other specific use, then to such person or persons as such tribe shall designate."

And by section 12, of the same act, it is further provided, "that it shall be lawful for the President of the United States, at the request of any Indian tribe to which any annuity shall be payable in money, to cause the same to be paid in goods."

Regulation No. 30, of June 1, 1837, for carrying into effect the provisions of this act, is as follows, viz:

"The 11th section of this act permits any tribe to appropriate their annuities to the purpose of education, or to any other specific use. But the exercise of this privilege is dependent on the discretion of the Executive, and no appropriation of any part of their annuities can be made by a tribe under this section, *without the express sanction of the Department of War.*"

It will therefore be seen that no authority is given to the Commissioner, by the 11th or 12th sections of the act of 1834, to exercise any power whatever over the subject of the payment of annuities. Under the 11th section no tribe can make any appropriation of their annuities to any specific purpose "*without the express sanction of the Department of War;*" and by the 12th section no tribe can be permitted to receive their money annuities in goods, *but by direction of the President.*

I am not aware that there is any other act of Congress bearing on this question, except the 3d section of the act of March 3, 1847. That section, so far as it is applicable to the question now under consideration, is as follows:

"*And be it further enacted*, That the eleventh section of the 'Act to provide for the better organization of the Department of Indian Affairs,' approved June 30, 1834, be, and the same is hereby, so

amended as to provide that all annuities or other moneys, and all goods, stipulated by treaty to be paid or furnished to any Indian tribe, shall, *at the discretion of the President or Secretary of War*, instead of being paid over to the chiefs, or to such persons as they shall designate, be divided and paid over to the heads of families and other individuals entitled to participate therein; or, with the consent of the tribe, be applied to such purposes as will best promote the happiness and prosperity of the members thereof, under such regulations as shall be prescribed by the Secretary of War, not inconsistent with existing treaty stipulations."

It will be seen that the whole subject of the payment of Indian annuities, so far as this section is concerned, is committed to "the discretion of the President or Secretary of War;" the language, very clearly, as I think, excluding all idea that it could have been the intention of Congress to confer any authority whatever on the Commissioner.

I do not find that any regulations were issued by the President or Secretary of War for carrying into effect the provisions of this section, unless the instructions of the Commissioner of Indian Affairs to the officers of the Indian Department, under date of August 30, 1847, are to be understood as announcing such regulations. The following is an extract from those instructions:

"As the responsible guardian of the interest and welfare of the Indians, and in pursuance of the discretionary power vested in him by law, the President therefore directs that hereafter all annuities and other money and goods due the Indians be paid and distributed to heads of families, and to individuals without families, entitled to participate therein, unless a different mode of payment or distribution is expressly required by treaty stipulation; in which case the views of the tribe in general council will be taken; and if the mode prescribed by treaty be insisted on, after a full explanation and due consideration, it will be adopted."

If this provision, in the instructions of the Commissioner, is to be considered as evidence of a regulation prescribed by the Executive for carrying the act into effect, as its language imports, it cannot, I think, be otherwise construed than as a positive prohibition against the appropriation of Indian annuities to any such purpose as that contemplated by the allowance of the present claim. But independent of this regulation, if it be one, there appears to me to be an entire want of authority in the Commissioner, as such, to direct the disposition of the money appropriated for the payment of Indian annuities.

Whether the Secretary of the Interior, by virtue of the several acts of Congress which have been referred to, or of any other act, would have authority to direct the money appropriated by Congress for the payment of treaty annuities to be paid either wholly or in part to

creditors of the tribe, is a question which I do not conceive arises in this case, and upon it I express no opinion.

I have now gone through, at much greater length than I at first intended, with an examination of the several questions arising out of this claim, and the grounds on which its allowance has been urged on this office. These questions, relating to the respective jurisdictions of the accounting and other officers of the Government, are questions of importance as well as of delicacy. I have no wish to claim any jurisdiction for the accounting officers that was not intended to be conferred on them by law, nor to deny any authority to any other officers of the Government that the law has confided to them. I have sought for the solution of these questions in the laws themselves, and have some confidence that I have arrived at correct conclusions. I shall, however, hold myself open to be convinced by argument that my opinions are erroneous; and when thus convinced they will be cheerfully retracted and abandoned. Until then I hold it to be my duty to abide by and maintain them.

I concur with the Second Auditor that the claim ought not to be admitted, and affirm his decision disallowing it.

HILAND HALL,
Comptroller.

JURISDICTION OF THE FIRST COMPTROLLER.

The same question in principle which is so ably discussed by Mr. Hall has frequently arisen since he wrote the foregoing opinion, and has been decided in accordance with the views set forth by him.

There are cases in which the allowance of a claim by an officer, who is not an accounting officer, is conclusive on the accounting officers of the Treasury.

Whenever Congress has intended to make such allowance conclusive on the accounting officers of the Treasury, or other officers of the Government, in any case or class of cases, that intention has been shown in explicit language. (Rev. Stats., 48, 846, 1089; 3 Stats., 771; 6 Stats., 280; 9 Stats., 414; 13 Stats., 240. "Rates" of pay for "labor to be fixed by the Secretary of the Treasury:" 21 Stats., 438; *Allen vs. Blunt*, 3 Story, 744; *Martin vs. Mott*, 12 Wheat., 19.)

But the mere authority to approve or allow claims in the first instance does not make such approval or allowance conclusive on the accounting officers. This question has arisen in many classes of claims; as, for example, in those for refunding internal-revenue taxes which have been unlawfully collected.

Section 3426 of the Revised Statutes gives the Commissioner of Internal Revenue authority to "make regulations, upon proper evidence of the facts, for the *allowance* of * * * stamps * * * unnecessarily used." This section does not repeal, as to such claims, the other sections of the Revised Statutes giving to the accounting officers jurisdiction of all claims which are to be settled and adjusted in the Treasury Department; nor does it make the allowance by the Commissioner conclusive on these officers. (Rev. Stats., 191, 236, 248, 269, 277, 297, 951; act of June 14, 1878; 20 Stats., 130, sec. 4; 15 Op. Att'ys-Gen., 139; House Ex. Doc. No. 27, 2d sess. 45th Cong., p. 9.)

The usage of the Treasury Department supports the position that the allowance of a claim by the Commissioner could in no case oust the jurisdiction of the accounting officers. (Savings-Bank case, *ante*, 194; Bender's case, *ante*, 339.) Such allowance, as said by Hon. H. F. French, Assistant Secretary of the Treasury, is "a mere step in the system of internal-revenue laws," and "the decision of the Commissioner of Internal Revenue is not made final or conclusive by any statute; but it was clearly within the province of the Comptroller in this case to decide whether the opinion of the Commissioner of Internal Revenue was or was not correct both in law and fact." (House Ex. Doc. No. 27, 2d sess. 45th Cong., p. 43.)

The construction given to statutes by those charged with the duty of executing them will not be lightly disturbed or changed by the courts, especially when it has gone into effect in established practice. (United States *vs.* Moore, 95 U. S., 763; Edwards' Lessee *vs.* Darby, 12 Wheat., 210; United States *vs.* The State Bank of North Carolina, 6 Pet., 39; United States *vs.* Macdaniel, 7 Pet., 14.)

Even if the "allowance" by the Commissioner gives a right of action in the Court of Claims, it does not follow that the duty of the First Comptroller to inquire into the validity of the claim is in any degree modified or affected.

The existence of such a right of action is not inconsistent with the existence of a power in the First Comptroller to disallow the claim if he regards it as one which the Government should not pay. (See *ante*, 346.)

If a quartermaster or other officer be authorized by statute to buy and receive property and give a voucher as evidence of the purchase and receipt, such voucher may be *prima facie* evidence of a contract upon which an action in the Court of Claims may be brought after the claimant has exhausted his remedy before the accounting officers without securing payment; but this effect of the voucher does not de-

prive the accounting officers of their jurisdiction and authority over the claim when it is before them.

For even stronger reasons than those applicable to section 3426 of the Revised Statutes, the allowance by the Commissioner, under section 3220, is not conclusive on the First Comptroller. This section does not use the word "allowance," which is found in section 3426. It simply says the Commissioner is authorized, "subject to regulations prescribed by the Secretary of the Treasury, * * * to remit, refund, and pay back all taxes erroneously or illegally assessed or collected."

These words had a literal meaning when first used in the act of June 30, 1864. (13 Stats., 239.) The Commissioner did actually "refund and pay back" such taxes "by drafts drawn on collectors of internal revenue." This power was taken away by the act of March 3, 1865 (13 Stats., 483, sec. 3), and the words "refund and pay back" became *inoperative*—they ceased to have a meaning. The Commissioner could no longer "pay back," because the act of 1865 required collectors to pay the gross amount of collections daily into the Treasury.

If the words "refund and pay back," which are retained in section 3220, *must* be assigned a meaning, it is *safer*, and more in accordance with the language, shorn as it is of its original meaning, to say that they authorize the Commissioner to approve claims for a refund as a mere step in the process of accounting.

Like other approvals in similar cases, it is subject to the action of the proper accounting officers. An internal-revenue refunding claim cannot be paid unless it has been "settled and adjusted in the Department of the Treasury." (Rev. Stats., 236, 248, 269, 305, 313.) Section 3426 cannot be construed as repealing sections 248 and 269, which prescribe the means by which to "pay back" the money demanded. These sections are *in pari materiâ*, and their provisions can be easily harmonized by the foregoing construction, but by none other. If not subject to the untrammelled action of the accounting officers, the provisions of law which give these officers jurisdiction over accounts *for the payment of such claims* are practically repealed, and hence there would be no authority to actually pay them. This is the logical result of any argument that could be made in support of the construction that would oust the jurisdiction of the First Comptroller in respect of internal-revenue refunds.

But as there is unquestioned authority in the executive branch of the Government to consider, allow, and pay internal-revenue refunding claims, and as the statement of an account, and an examination of the items and of the vouchers therewith, by the accounting officers, are essential prerequisites to the payment of these claims, the allowance of them

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If a quartermaster or other officer be authorized by statute to buy and receive property and give a voucher as evidence of the purchase and receipt, such voucher may be *prima facie* evidence of a contract upon which an action in the Court of Claims may be brought after the claimant has exhausted his remedy before the accounting officers without securing payment; but this effect of the voucher does not de-

prive the accounting officers of their jurisdiction and authority over the claim when it is before them.

For even stronger reasons than those applicable to section 3426 of the Revised Statutes, the allowance by the Commissioner, under section 3220, is not conclusive on the First Comptroller. This section does not use the word "allowance," which is found in section 3426. It simply says the Commissioner is authorized, "subject to regulations prescribed by the Secretary of the Treasury, * * * to remit, refund, and pay back all taxes erroneously or illegally assessed or collected."

These words had a literal meaning when first used in the act of June 30, 1864. (13 Stats., 239.) The Commissioner did actually "refund and pay back" such taxes "by drafts drawn on collectors of internal revenue." This power was taken away by the act of March 3, 1865 (13 Stats., 483, sec. 3), and the words "refund and pay back" became *inoperative*—they ceased to have a meaning. The Commissioner could no longer "pay back," because the act of 1865 required collectors to pay the gross amount of collections daily into the Treasury.

If the words "refund and pay back," which are retained in section 3220, *must* be assigned a meaning, it is *safer*, and more in accordance with the language, shorn as it is of its original meaning, to say that they authorize the Commissioner to approve claims for a refund as a mere step in the process of accounting.

Like other approvals in similar cases, it is subject to the action of the proper accounting officers. An internal-revenue refunding claim cannot be paid unless it has been "settled and adjusted in the Department of the Treasury." (Rev. Stats., 236, 248, 269, 305, 313.) Section 3426 cannot be construed as repealing sections 248 and 269, which prescribe the means by which to "pay back" the money demanded. These sections are *in pari materiâ*, and their provisions can be easily harmonized by the foregoing construction, but by none other. If not subject to the untrammelled action of the accounting officers, the provisions of law which give these officers jurisdiction over accounts *for the payment of such claims* are practically repealed, and hence there would be no authority to actually pay them. This is the logical result of any argument that could be made in support of the construction that would oust the jurisdiction of the First Comptroller in respect of internal-revenue refunds.

But as there is unquestioned authority in the executive branch of the Government to consider, allow, and pay internal-revenue refunding claims, and as the statement of an account, and an examination of the items and of the vouchers therewith, by the accounting officers, are essential prerequisites to the payment of these claims, the allowance of

Section 3426 of the Revised Statutes gives the Commissioner of Internal Revenue authority to "make regulations, upon proper evidence of the facts, for the *allowance* of * * * stamps * * * unnecessarily used." This section does not repeal, as to such claims, the other sections of the Revised Statutes giving to the accounting officers jurisdiction of all claims which are to be settled and adjusted in the Treasury Department; nor does it make the allowance by the Commissioner conclusive on these officers. (Rev. Stats., 191, 236, 248, 269, 277, 297, 951; act of June 14, 1878; 20 Stats., 130, sec. 4; 15 Op. Att'ys-Gen., 139; House Ex. Doc. No. 27, 2d sess. 45th Cong., p. 9.)

The usage of the Treasury Department supports the position that the allowance of a claim by the Commissioner could in no case oust the jurisdiction of the accounting officers. (Savings-Bank case, *ante*, 194; Bender's case, *ante*, 339.) Such allowance, as said by Hon. H. F. French, Assistant Secretary of the Treasury, is "a mere step in the system of internal-revenue laws," and "the decision of the Commissioner of Internal Revenue is not made final or conclusive by any statute; but it was clearly within the province of the Comptroller in this case to decide whether the opinion of the Commissioner of Internal Revenue was or was not correct both in law and fact." (House Ex. Doc. No. 27, 2d sess. 45th Cong., p. 43.)

The construction given to statutes by those charged with the duty of executing them will not be lightly disturbed or changed by the courts, especially when it has gone into effect in established practice. (United States *vs.* Moore, 95 U. S., 763; Edwards' Lessee *vs.* Darby, 12 Wheat., 210; United States *vs.* The State Bank of North Carolina, 6 Pet., 39; United States *vs.* Macdaniel, 7 Pet., 14.)

Even if the "allowance" by the Commissioner gives a right of action in the Court of Claims, it does not follow that the duty of the First Comptroller to inquire into the validity of the claim is in any degree modified or affected.

The existence of such a right of action is not inconsistent with the existence of a power in the First Comptroller to disallow the claim if he regards it as one which the Government should not pay. (See *ante*, 346.)

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by the Commissioner must be regarded as having been intended to secure, in the adjudication of such claims, the benefit of his official knowledge as the internal-revenue executive; but not to take from the Fifth Auditor and the First Comptroller the duty imposed upon them by the organic laws of the Treasury Department, of examining, upon their merits, all such claims coming before them as involve, in order to their payment, the statement and settlement of an account by that Auditor, and the certification by that Comptroller of the balance found due.

It cannot reasonably or safely be held, unless the statute clearly so requires—and it does not—that in a single class of cases the whole policy of the accounting system has been changed.

To so hold would be to withdraw from the Government, in the settlement of those cases, the benefit of an examination of the vouchers and other evidence in their support by the proper accounting officers. It is highly improbable that Congress intended to do this, since it may fairly be inferred from the policy of the long-established system of public accounting, that such withdrawal would result in injury to the public service. It should require clear language to authorize a construction of law which would produce such a result.

The act of June 14, 1878 (20 Stats., 130, sec. 4), shows unmistakably that the accounting officers are not concluded by the action of the Commissioner. It provides that the accounting officers shall "*continue* to receive, examine, and consider the *justice* and *validity* of all claims under appropriations the balances of which have been exhausted or carried to the surplus fund," in order that such claims may be reported to Congress for an appropriation. This legislation assumes that as to many claims—including internal-revenue refunding claims—the accounting officers could take no action after the appropriation originally applicable to their payment had been exhausted. Therefore the provisions of section 4 were enacted in order to *continue* in the accounting offices the authority to consider the justice and validity of all such claims. The words of the section imply the existence of original authority in the accounting officers to investigate their justice and validity. There would be no such investigation if the allowance or approval of any other officer were accepted as conclusive.

A claim for the refunding of internal-revenue tax is a claim or demand against the United States. Section 236 of the Revised Statutes provides that—

"All claims and demands whatever by the United States or against them, and all accounts whatever in which the United States are concerned, either as debtors or as creditors, shall be settled and adjusted in the Department of the Treasury."

The Auditors and Comptrollers, and they only, are charged with the duty of executing the provisions of this section. (Rev. Stats., Title VII, chaps. 3, 4.) Their action on claims and accounts is exclusive of that of any other executive officers, and is conclusive upon the executive branch of the Government. (Rev. Stats., 191.) These officers must, therefore, act upon an internal-revenue refunding claim; first, because it is a demand against the United States; and, secondly, because the mode of payment involves the statement of an account and the certification of a balance due.

Such claim cannot be paid unless it has been "settled and adjusted in the Department of the Treasury" (Rev. Stats., 236); which settlement and adjustment requires that "the Fifth Auditor shall receive and examine" (*Id.*, 277, cl. 6) and "settle" it (*Id.*, 269); whereupon the First Comptroller shall *re-examine* it and "certify the balance" due thereon (*Id.*, 296), if any be found due; which certification is to be registered, and a copy of the Comptroller's certificate transmitted to the Secretary (*Id.*, 313); whereupon the Secretary of the Treasury shall issue a warrant on the Treasurer for payment (*Id.*, 248), which warrant is next to be countersigned by the First Comptroller; and not until all this is done can payment be made (*Id.*, 305).

The statutes require the Auditor and Comptroller to examine claims. The Comptroller then *certifies* the balance, if any, found due; and his certificate is made "conclusive upon the executive branch of the Government." (Rev. Stats., 191.) It is thus conclusive upon the President, and upon the heads of Departments, and hence also upon the Commissioner of Internal Revenue. The statute employs very explicit language to secure this conclusive effect. If this action is conclusive on all these officers, no action of theirs can be conclusive on the Auditor and Comptroller, unless it is made so by an equally explicit statute, and there is none such in respect to internal-revenue refunding claims.

The accounting officers are not, as to claims of the character in question, mere ministerial officers.

The jurisdiction exercised by the Auditor and the Comptroller over the adjustment of the claims is of a discretionary character.

Such being its character, the action of the Commissioner of Internal Revenue is not binding upon them.

Accounting officers are *quasi-judicial* officers. They perform mere ministerial duties only in cases where the sum due is conclusively fixed by law, or pursuant to law. Except in such cases, the action of the accounting officers upon claims coming before them for settlement and

diction and *discretion* of the head of the Navy Department, and not subject to revision or correction by the officers of any other Department."

This language is not of *general application*; it is applicable only to those cases in which a *discretionary* authority is vested in an officer.

When the court says that "the accounting officers of the Treasury have not the burden of responsibility cast upon them of revising the judgments, correcting the supposed mistakes, or annulling the orders of the heads of Departments," this is stated not as a general principle of law applicable to the responsibility of the accounting officers in the settlement of accounts and claims generally, but only in relation to a matter over which the head of a Department is clothed with a *discretionary* authority.

There are two classes of cases, both very limited, where by statute the accounting officers are required to admit in the settlement of accounts the certificate of, or certain specified allowances made by, other officers; and where heads of Departments and other officers are authorized by statute, in terms or in effect conclusive on the accounting officers, to exercise a *discretion* as to the expenditure of an appropriation. The accounting officers do not question the sufficiency of the certificate or allowance, or the necessity and propriety of the expenditure, in such cases.

Examples of the first class are found in the Revised Statutes. The certificates given under section 47, by the President of the Senate and the Speaker of the House of Representatives, in respect of the salary and accounts for travelling expenses of Senators, Representatives, and Delegates in Congress, are by section 48 made "conclusive upon all the Departments and officers of the Government." The allowance under section 824 of the additional counsel fee to district attorneys, "not exceeding thirty dollars," when there is a conviction for crime on an indictment and a jury trial, is, when made by the court, conclusive on the accounting officers; because the statute evidently makes the court the judge of the "importance and difficulty of the cause" tried. Section 846 provides that no "accounts of fees and costs paid [by the U. S. marshal] to any witness or juror, upon the order of any judge or commissioner, shall be so examined as to charge any marshal for any erroneous taxation of such fees and costs." The same section also provides that "where the ministerial officers of the United States have or shall incur extraordinary expenses in executing the laws thereof, the payment of which is not specifically provided for, the President of the United States is authorized to allow the payment thereof under the special taxation of the district or circuit court of the district in

which the said services have been or shall be rendered, to be paid from the appropriation for defraying the expenses of the judiciary.” When such an allowance has been made, there is of course no discretion on the part of the accounting officers to revise the action of the President, as he is made the judge in the matter. A copy of a final judgment of the Court of Claims for a sum found due the claimant, when certified by the clerk of the Court of Claims, and signed by the Chief Justice, or, in his absence, by the presiding judge of that court, as provided in section 1089, is conclusive upon the accounting officers.

Several instances under the second class may be found in the annual appropriation acts, and they depend in all cases on the point as to whether Congress intended to vest the sole discretion in heads of Departments or other officers. When the language of the statute clearly shows such intention, then undoubtedly the mode or wisdom of the exercise of the discretion cannot become subjects of revision by the accounting officers. (Ross *vs.* Reed, 1 Wheat., 482; Martin *vs.* Mott, 12 Wheat., 19; Royal British Bank *vs.* Turquand, 6 Ell. & B., 327; Maclae *vs.* Sutherland, 25 Eng. Law and Eq., 114; United States *vs.* Speed, 8 Wall., 83; Thompson’s case, 9 Ct. Cls., 188; Philad’a & Trent. R. R. Co. *vs.* Stimpson, 14 Pet., 448; Allen *vs.* Blunt, 3 Story, 742; United States *vs.* Arredondo, 6 Pet., 729.)

There does not appear to be anything in the case of The United States *vs.* Jones—which is so often cited in denial of the powers of accounting officers—in support of a claim of supervisory jurisdiction in the heads of Departments over the accounting officers. It simply shows that these officers cannot question the propriety of acts done under and pursuant to a discretionary power vested solely in the head of a Department; and, therefore, that in the case before the court the Auditor had no authority to debit the officer’s pay-account with money which had been lawfully advanced and expended, under the direction of the Secretary of the Navy, in a matter solely within the discretion of the latter. The reasoning of the court is as strong in support of the authority of the accounting officers, *in matters within their jurisdiction and discretion*, as it is in support of the authority of heads of Departments. Where any conflict of jurisdiction arises, the only questions for discussion are: To whom has the law delegated the discretion or authority? and to what extent has it been delegated?

It has been shown that in internal-revenue refunding claims the power to allow and pay a claim is not vested exclusively in the Commissioner of Internal Revenue, or in the Secretary of the Treasury, or in both these officials; that their approval of such claims is a step in the accounting system of the Government, and that the action of the

accounting officers is a *sine quâ non* for the payment of such claims. That action, involving, as it does, the exercise of as much discretion as is required in any other class of claims or accounts within their jurisdiction and duty, cannot be regarded as being merely ministerial in its nature. An account must be stated, examined, and certified by the accounting officers for the payment of every claim which is settled in the Treasury Department. The action required of accounting officers in the settlement and adjustment of claims and accounts is, as has already been shown by the statutes and decisions of the courts, and more particularly in *Watkins vs. The United States*, discretionary in the highest degree. They are presumed to state the account according to the law and the facts in each case; to admit credits which, in their judgment, are correct, and to reject all credits and claims which, in their opinion, are illegal or not supported by satisfactory evidence as to the facts alleged by the claimant or debtor.

In the performance of these duties the accounting officers are not subject to the jurisdiction of any officer of the Executive branch of the Government, nor to that of any court of the judicial branch. They are not mere machines created to register or blindly to execute the opinions or acts of other officers on matters which pertain by the organic laws of the fiscal system, by well-defined public policy, and by long practice, to the jurisdiction of the accounting officers—a jurisdiction which it is their duty to maintain even in cases in which its existence may be doubtful. They must assert that jurisdiction as being discretionary in its character in each and every case which requires their action, until the contrary shall appear in the plain, unequivocal language of an act of Congress passed with the intent to vest that jurisdiction in some other officer or tribunal. This position is well supported by the Supreme Court in the case of *The United States vs. Arredondo et al.* (6 Pet., 729), wherein it was laid down as “a universal principle, that, where power or jurisdiction is delegated to any public officer or tribunal over a subject-matter, and its exercise is confided to his or their discretion; the acts so done are binding and valid as to the subject-matter * * * unless an appeal is provided for, or other revision, by some appellate or supervising tribunal, is prescribed by law.” Applying this universal principle to the subject of a refunding claim, it might be supposed, at first view, that the discretion to refund was vested solely in the Commissioner of Internal Revenue; but to so hold would be to overlook the facts that the accounting officers have been created an executive tribunal, with general jurisdiction to examine all claims and accounts which are settled in

the Treasury Department; and that under this jurisdiction they have by law as much power to examine a refunding claim as has the Commissioner or Secretary. This power must remain in them unless it has been expressly, or by clear implication, taken from them by statute. There is no statute which has, either by express language or by necessary implication, such an effect. In fact, the implications of all the provisions on the subject are in support of the jurisdiction of the accounting officers. That their action on refunding claims is required by law, and its necessity unquestioned, is conclusive on the point that, when such claims come before them, as vouchers on which to state accounts, and certify balances thereon as *just and true in all respects*, the proper accounting officers are constituted, by the organic laws of the Treasury, a supervisory tribunal in the matter of internal-revenue refunding claims, and of all other claims the allowance of which is not exclusively vested by statute in some other officer or tribunal.

That the jurisdiction of the accounting officers was intended to be independent of all supervisory control is shown by the proceedings of Congress in the matter of the organization of the Treasury Department. The necessity of such independence to a faithful and efficient discharge of their duties was recognized in the discussion of the measures for organizing the financial department of the Government.

At the first session of Congress, the House of Representatives being in Committee of the Whole, Mr. Boudinot (May 19, 1789) moved a resolution that an office be established for the management of the finances of the United States, at the head of which should be an officer, to be denominated the Secretary of Finance. (Debates in Congress, vol. 1, o. s., p. 384.) The resolution gave rise to the celebrated discussion of the power of removal. The next day the question came squarely before the Committee of the Whole as to whether the Department should be placed in the hands of a single individual, or in a board of commissioners (*Id.*, 400), and Mr. Gerry stated the position of the head of the Department in the alternative: "a Comptroller to control his operations with respect to the accounts and vouchers;" or, as in a list of duties of the Secretary read by Mr. Benson on the previous day, a head who would control all the officers in his Department. The discussion, however, at that Congress was mainly on the choice between a board and a single head. Mr. Madison objected to the former, as follows (*Id.*, 408):

"If a board is established, the independent officers of Comptroller and Auditor are unknown; you then give the aggregate of these powers to the board, the members of which are equal; therefore you give more power to each individual than is proposed to be intrusted to the Secretary."

He also said "he had no doubt but that the officers might be so constituted as to restrain and check each other."

Mr. Baldwin, who subsequently brought in the bill (*Id.*, 408), "was not an advocate of unlimited authority in" the Secretary:

"He hoped to see proper checks provided; a Comptroller, Auditors, Register, and Treasurer. He would not suffer the Secretary to touch a farthing of the public money beyond his salary. The settling of the accounts should be in the Auditors and Comptroller; the registering them to be in another officer; and the cash in the hands of one unconnected with either."

A committee of eleven (*Id.*, 412) was elected May 21 to prepare and bring in a bill or bills for the establishment of a Department of Foreign Affairs, a Treasury Department, and a Department of War. Mr. Baldwin, chairman of the committee (*Id.*, 436), on the 4th June, reported a bill for the Treasury Department. When the question arose as to the tenure of the Comptroller, Mr. Madison said (*Id.*, 636):

"In analyzing its [the office of Comptroller's] properties we shall easily discover they are not purely of an executive nature; it seems to me they partake of a judiciary quality as well as executive; perhaps, the latter obtains in the greatest degree. *The principal duty seems to be deciding upon the lawfulness and justice of claims and accounts subsisting between the United States and particular citizens*; this partakes strongly of the judicial character."

Mr. Smith, of South Carolina, thought the Comptroller ought to be independent of the Executive, in order that he should not be influenced by the President in his decisions.

Mr. Madison (*Id.*, 638) questioned very much whether the Executive Magistrate—

"Can or ought to have any interference in the settling and adjusting the legal claims of individuals against the United States. The necessary examination and decision in such cases partake too much of the judicial capacity to be blended with the executive. I do not say the office is either executive or judicial; I think it rather distinct from both, though it partakes of each, and therefore some modification, accommodated to those circumstances, ought to take place.' I would therefore make the officer responsible to every part of the Government."

Mr. Madison the next day withdrew his proposition giving the Comptroller a fixed tenure, and it does not appear to have been afterwards presented.

After Alexander Hamilton had been succeeded as Secretary of the Treasury by Oliver Wolcott, he advised the President as to the proper officer to whom should be assigned the temporary execution of the Comptroller's office, made vacant by Mr. Wolcott's appointment as Secretary. That which struck as the fittest arrangement he did not

advise, on account of the peculiar personal relations of the Commissioner of Revenue (Mr. Coxe) to Mr. Wolcott. The remainder of the letter is given in full, as presenting the view of the complicated system and divided responsibility of the Treasury Department which was held by the first Secretary of the Treasury:

“The Treasurer would by no means answer, because, as the *keeper of the money*, it is particularly essential that all the checks upon him should be maintained in full vigor; and the Comptroller is the officer who, in the last resort, *settles* his accounts, as well as concurs, in the first instance, in authorizing, by the warrants which are issued by the Secretary, and countersigned by the Comptroller, the payments and receipts of the Treasurer.

“The Register is also one of the principal checks of the *Department*; first, upon the Secretary and Comptroller, whose warrants he must register and sign before they can take effect; and secondly, upon the settlements of the Comptroller and Auditor, by recording their acts, and entering them on the books to the proper accounts.

“Of any of the officers of the Department, except the Commissioner of the Revenue, the business can be best managed through the Auditor, consistently with the preservation of the most material checks, with the restriction I have mentioned this morning, *of his not deciding as Comptroller upon any account he may have settled as Auditor*. The temporary suspension of the final conclusion of the accounts—all the previous examinations going on—cannot be attended with any serious inconvenience. If the laws admit of it (which I doubt, as they now stand), the appointment of the Auditor's first clerk to act as Auditor in his stead will be a conveniency. I do not think this would be liable to the same objections as the appointing a clerk to act as Comptroller, whose office imports *the second trust in the Department*. In one sense, to appoint the Auditor to act as Comptroller, will comport best with the spirit of the constitution of the Department. This is, that *the officer who is to settle the accounts*, by countersigning the warrants for receipts and payments, shall have an opportunity to observe their conformity with the course of business as it appears in the accounts; and shall have notice, in the first instance, of all payments and receipts, in order to the bringing all persons to account for public moneys. This reason operates to make the Auditor, who is the coadjutor of the Comptroller in settlements, his most fit substitute *in this particular view*.” (Works of Hamilton, vol. v, p. 77.)

Subsequently, defending himself against a charge of having violated the law in advancing salary to the President, he says:

“As between the officers of the Treasury, I take the responsibility to stand thus: The Secretary and Comptroller, in granting warrants upon the Treasury, *are both answerable for their legality*. In this respect *the Comptroller is a check upon the Secretary*. With regard to the expediency of an advance, in my opinion, the right of judging is exclusively with the head of the Department. The Comptroller has no voice in this matter. So far, therefore, as concerns legality in the issues of money while I was in the Department, *the Comptroller must answer with me*; so far as a question of expediency or the due exercise of discretion

may be involved, I am solely answerable; and uniformly was the matter understood between successive Comptrollers and myself. Also, it is essential to the due administration of the Department that it should be so understood." (Works of Hamilton, vol. vii, p. 548.)

The case of *The United States vs. Jones* was decided at the December term, 1855. Before and since that time the pretension—which was definitely discredited and rejected by the act of 1868, now section 191 of the Revised Statutes—was occasionally advanced that the opinion of the head of a Department directing a claim to be paid is binding upon the accounting officers by whom, on the statement of the account and certification of a balance, the vouchers in support of the claim are to be examined; but, as will be shown, that case gave no support to any such doctrine.

It was occasionally maintained, in the opinions of the Attorneys-General, that the President possessed appellate jurisdiction in the settlement of claims and accounts. (2 Op., 463; 8 Op., 293.) The existence of this jurisdiction was denied by Wirt (1 Op., 596, 636, 705, 706); Taney (2 Op., 480); Gilpin (3 Op., 500); Crittenden (5 Op., 630); Bates (11 Op., 14, 108).

It was held occasionally, in the opinions of the same officer, that the heads of Departments also had the like jurisdiction. (2 Op., 302, 652; 5 Op., 87, 630; 7 Op., 724; 8 Op., 293; 10 Op., 231, 435; 11 Op., 14, 108, 129; 12 Op., 43.) This jurisdiction was denied to exist by Wirt (1 Op., 624, 678); Taney (2 Op., 507, 544); Crittenden, September 12, 1850 (not printed).

Finally the question was, as already stated, settled by the act of 1868, now section 191 of the Revised Statutes—an act making no new law, but declaratory of the law as its true sense always was; and this settlement has been recognized in the subsequent opinions of the Attorneys-General. (13 Op., 5, 218; 14 Op., 65, 101; 15 Op., 139, 192, 626; 16 Op., 494.)

The doctrine, now exploded, that official authority depends on dignity of position rather than on law, has no sanction in any legal principle applicable to our system of Government, or in any authoritative judicial decision by our courts; and it was spiritedly rejected by the Supreme Court in a decision which will "stand the test of human scrutiny, of talents, and of time," and which lays down as the true American principle that—

"We have no officers in this Government, from the President down to the most subordinate agent, who does not hold office under the law, with prescribed duties and limited authority." (The Floyd Acceptances, 7 Wall., 676.)

COUNTERSIGNING OF WARRANTS.

The character of the jurisdiction or authority exercised by the First Comptroller in countersigning warrants has occasioned some discussion.

Section 269 of the Revised Statutes makes it the duty of the First Comptroller to “countersign all warrants drawn by the Secretary of the Treasury, which shall be *warranted by law*.” This duty was imposed upon the Comptroller by section 3 of the act of Congress of September 2, 1789, establishing the Treasury Department. (1 Stats., 65, 66.) It has already been shown that Alexander Hamilton construed this requirement in its plain, obvious sense, as making the Comptroller jointly answerable with the Secretary for the *legality* of all warrants countersigned by him, and as constituting him in this respect “a check upon the Secretary.” There is abundant evidence that the great organizer of the Treasury system attached to the requirement its true meaning. There can indeed be no higher authority on the question than the views of that profound and illustrious lawyer, statesman, and financier. His judgment as to the true interpretation and purpose of any part of the legislation establishing the Treasury Department is entitled to the same implicit confidence which is reposed in Chief Justice Marshall’s judgment on a question touching the Constitution.

If the Comptroller is jointly responsible with the Secretary for the legality of warrants, he is charged with a duty or trust of a highly discretionary nature. A discretionary trust is defined by Bouvier as one “which cannot be duly administered without the application of a certain degree of prudence and judgment.” (Law Dict., 14th ed.) It is a self-evident proposition that the Comptroller cannot determine, “without the application of a certain degree of prudence and judgment,” whether a warrant on the Treasurer granted by the Secretary of the Treasury is “warranted by law.” What did Congress mean by the term “warranted”? Webster defines the verb “warrant” thus: “* * * To support by authority or proof; to justify * * *.” This is evidently the sense in which the term is used by Congress in the qualification which it made as to the warrants which the Comptroller should countersign; that is, that his duty is to countersign only those warrants which are in his judgment *supported by authority of law*, or, in other words, which are *justified by law*. No power or trust could be more distinctly discretionary than this; and Mr. Madison claimed that it “partakes strongly of the judicial character,” and that “the necessary examination and decision in such cases partake too much of the judicial capacity to be blended with the executive.” It is for this plain reason that a *mandamus* will not lie to compel the Comptroller to countersign a warrant

or certify a balance to be due. (*Decatur vs. Paulding*, 14 Pet., 515; *Bender's case*, *ante*, 344; *Sallu's case*, *ante*, 232.) His liability to a mandamus for the performance of these acts has never been asserted in any quarter; yet if the duty were of a ministerial character the mandamus would lie. Had Congress simply required the Comptroller "to countersign all warrants drawn by the Secretary of the Treasury," a mandamus would lie to compel performance of this duty, for it would be purely ministerial. Congress, however, added to this requirement, and as must be supposed for some purpose, the important qualification: "which shall be warranted by law." This qualification is equivalent to a prohibition to countersign any warrant which shall *not* be warranted by law. On whom did Congress cast the burden of determining for the Comptroller whether warrants coming before him for counter-signature are or are not warranted, authorized, or justified by law? If on any other officer than himself, would it not have indicated, expressly or impliedly, *what* officer? In the absence of such indication, or of the slightest trace of a disposition or purpose to make the countersigning a mere ministerial attestation, it would seem to be clear beyond dispute that Congress used in its obvious, universal meaning the language in which it qualifies the Comptroller's duty to countersign warrants; that by the inevitable force of this language the Comptroller is jointly answerable with the Secretary for the legality of every warrant countersigned by him; and that, being so answerable, he must determine for himself as to such legality, whether his decision agree or disagree with the judgment of the Secretary on the same question. In the performance of this official duty, the Comptroller must exercise his own discretion and judgment; and such exercise is not an invasion of the discretion or a revision of the judgment lawfully exercised in relation to the same matter, at a previous stage, by the Secretary of the Treasury. In deciding that a particular warrant, which comes before him for counter-signature, is *not* "warranted by law," and that he will therefore not countersign it, the Comptroller does not assume to reverse or annul the prior action of the Secretary, or to revise his judgment. The Comptroller simply exercises his *own* judgment in a matter concerning which the law has clothed him with a discretionary power or trust. There must be a concurrence of judgment on the part of the Secretary and the Comptroller as to the legality of a warrant before the Comptroller can countersign it as a warrant which is "warranted by law;" and without such counter-signature neither the Register nor the Treasurer can recognize its legality.

The condition upon which the Comptroller is authorized to countersign a warrant is, that it shall be "warranted by *law*;" that is, that the

warrant shall be authorized or justified by some statute or enactment promulgated by the supreme legislative authority of the United States—Congress. (*Swift vs. Tyson*, 16 Pet., 18.) If the Comptroller find the warrant not so justified, he has no authority to countersign it, inasmuch as his authority to countersign warrants is limited to those “which shall be warranted by law.” This interpretation is necessary to give effect to all the words of the statute, so that “no clause, sentence, or word shall be superfluous, void, or insignificant,” as a well-known rule of construction requires. (*Bender’s case*, *ante*, 330.) The Comptroller can exercise only such authority as is, either expressly or by necessary implication, conferred upon him by law. (*The Floyd Acceptances*, 7 Wall., 676.) Within the limits of this authority, the Comptroller is independent of all other official authority; his duties are prescribed by the law, not by any other officer. The Comptroller’s office and jurisdiction are coeval with those of the Secretary of the Treasury; the mode of appointing both officers is the same; and the settled policy of the Government has been to treat the Comptrollership as being more akin to a judicial than to an executive office. This circumstance alone would suffice to show that his jurisdiction is not of a ministerial, but of a highly discretionary nature, and therefore not subject to restraint or control by any executive officer, whether superior or subordinate in rank. A power, trust, or jurisdiction conferred by law on one officer cannot be assumed, exercised, or abrogated by another officer upon the ground that the latter is superior in rank or dignity to the former. If it could, there would be an end of responsibility under the law. Authority is not derived from official dignity or rank, but from law. In the settlement of public accounts, the balances certified to the heads of Departments by the Commissioner of Customs, or the Comptrollers of the Treasury, are “conclusive upon the executive branch of the Government,” though these officers are not in official rank equal to the heads of Departments and the President. (*Rev. Stats.*, 191.) Rank is therefore no criterion of power or jurisdiction—the law is the only criterion. The fact that this conclusive effect is given to a balance certified by the Comptroller shows that Congress deemed it proper to give him authority to exercise judgment which could not be controlled by other Executive discretion; and, if so as to certified balances, why not as to the authority to countersign a warrant? Counter-signature as a mere ministerial act would give no additional protection to the Government, and would take from the statute one of its purposes as declared by Hamilton—to operate as a check.

As between the President and the Attorney-General, the latter is

inferior in rank or position, and in that sense he is a subordinate officer; but, as to many duties, he is not subordinate in the sense that the discharge of his duties can be controlled by the President. When he gives an opinion (Rev. Stats., 354, 356) he exercises his judgment, not that of the President, and, when he performs other duties (355, 359), he is independent of all control.

The authority of the Comptroller to judge whether warrants are warranted by law follows from the rule of construction that "the whole statute is to be taken together" (Rev. Stats., 191, 248, 269, 3675); and the legislative intent is to be ascertained by "comparing all the parts of them together" (Sedgwick, Stat., 199, 209). The statute requires the Secretary of the Treasury "to grant, *under the limitations* herein established, all warrants for moneys to be issued from the Treasury in pursuance of appropriations" (Rev. Stats., 248); and "all warrants drawn by the Secretary * * * shall specify the particular appropriation to which the same should be charged." The duty of the Secretary to "*specify the appropriation*" cannot be exercised *without judgment*. (Bender's case, *ante*, 344.) It is not a *ministerial* duty; yet the duty to judge is not given in as clear and strong terms as the duty of the First Comptroller to judge and only countersign those warrants which are "warranted by law." Any rule of construction which would take from the Comptroller the power to judge as to warrants would take from the Secretary the power to judge as to the existence of an appropriation—sometimes a very difficult question to decide. (Canal case, *ante*, 141; Ashton's case, *ante*, 162; Conger's case, 2 Lawrence, Compt. Dec., 34.)

The power of the Secretary to issue warrants is not absolute—it is "*under the limitations* herein established." (Rev. Stats., 248.) One of these limitations is that the First Comptroller shall countersign those "which shall be warranted by law."

The long-continued, uninterrupted usage and undisputed authority of the First Comptroller to judge as to warrants as well as the Secretary, thus making "both answerable for their legality," is the highest evidence of the authority to do so. From the days of Hamilton, in a system antedating the Constitution, down to this time, through a century, there is but a single suggestion of a doubt upon the subject. (5 Op., 643.) It has been asserted by Comptrollers and recognized by Secretaries. (*Ante*, 28, 79, 147, 187, 194, 337, 352.) As late as 1877, a high authority said, "by section 269, Revised Statutes, it is the duty of the Comptroller to countersign all warrants * * * *which* shall be warranted by law." (House Ex. Doc. No. 27, 2d Sess. 45th Cong., p. 43, *ante*, 340; 10 Op., 5.)

The policy and purpose of the statute require the exercise of judg-

ment by the Comptroller. Hamilton refers to the Comptroller, "*whose office imports the second trust in the Department,*" as "a check upon the Secretary," as an officer who, as to the legality of warrants, "must answer with" the Secretary. This was the policy with which the Department started, and it has remained unchanged. It is clearly expressed in the statute as applied to *all warrants*. No distinction has been made between classes of warrants or exceptions as to any. As to classes of warrants, see *ante*, 419.

The question as to the power of the First Comptroller in relation to the issue of a Treasury warrant was, October 11, 1881, referred by the Acting Secretary of the Treasury to the Attorney-General. A warrant for the advance of money to a disbursing officer of the medical staff of the Army had been countersigned by the Acting Comptroller, and, before the advance was made, the Comptroller became advised of the facts of the case. On these facts he considered that the law did not authorize the advance of the money to any Army disbursing officer, and he therefore advised against making it. The Comptroller was of opinion that the appropriation against which the warrant was drawn was one which the law required to be disbursed under the direction of the Interior Department; that, in addition to this objection, the sureties on the bond of a medical disbursing officer of the Army would not be held responsible for the disbursement of such money by such officer; and, hence, that the warrant was not warranted by law. (Artificial-Limbs case, 2 Lawrence, Compt. Dec.)

The Attorney-General gave an opinion, October 22, 1881, in which he admits the existence of a power in the First Comptroller to institute an inquiry "whether *any* warrant * * * is warranted by law;" but he, at the same time, holds that the Comptroller "should" have accepted the action of the Secretary in issuing a warrant in favor of the Army disbursing officer as a "decision of the Secretary of the Treasury as to the proper party in whose favor the warrant should be drawn." If, in such case, the decision of the Secretary be binding on the Comptroller, and the latter has no doubt as to the illegality of the advance, and that, if the advance be made, there is a total absence of such security as the law distinctly requires to be given in all cases of accountable advances to disbursing officers, then it will follow as an inevitable conclusion that the action of the Comptroller of the Treasury in countersigning warrants is of no importance for the prevention of illegal payments or advances of money from the public treasury.

The Attorney-General, referring to the jurisdiction conferred upon the Comptroller by the third clause of section 269 of the Revised

Statutes in the matter of countersigning warrants drawn by the Secretary of the Treasury, says:

“He [the First Comptroller] contends, I understand, that the clause requires him to *examine* into the legality of warrants granted by the Secretary, and by his counter-signature to *certify* to that legality; in other words, that his duties are the same as to matters which have already received the decision of the Secretary of the Treasury as they are to accounts which pass through him from the Auditor to the Secretary. And, furthermore, he contends that, by implication of the third clause, his decisions under it are as binding upon the head of the Department as are, by expression of section 191, Revised Statutes, his decisions under the first clause.”

There was evidently a misapprehension on the part of the Attorney-General as to the Comptroller's claim of jurisdiction. The Comptroller does not revise the action of the Secretary in granting a warrant on the Treasurer. He regards the action of the Secretary in the matter as the exercise of a power in the execution of a public trust, and claims no authority to control the Secretary in the exercise of such power. The Comptroller acts upon the warrant in the like manner, and recognizes no other authority on the part of any officer of the Government to decide for him the question as to whether the warrant so granted is or is not warranted by law. The Comptroller and the Secretary must each be responsible for the legality of the warrant. Neither of these officials can evade responsibility in the matter; they must each answer for the legality of their action. In the matter of granting warrants they are co-trustees executing a discretionary power. The Secretary and the Comptroller must each decide for himself the question as to whether the Treasurer should or should not be authorized to do the act commanded by the warrant. If, in the opinion of the Secretary, the payment or advance asked for in a given case is not authorized by law, he declines to grant a warrant; and, consequently, there is nothing to call for the action of the Comptroller. If the Secretary conclude that the payment or advance is authorized, he grants the warrant, and refers it to the Comptroller, and there the Secretary's power or function ends; therefore, when the Comptroller acts upon it, such action is, in the nature of the case, final and conclusive as to its legality; because there is then a concurrence of action on the part of the co-trustees. In such case it is clear that while the action of the Secretary is not binding on the Comptroller, the action of the latter is in effect a decision final in character. The law contemplates a concurrence of judgment on the part of the Secretary and First Comptroller in the matter of issuing money from the Treasury; and it has been always so construed from the time of the establishment of the office of First Comptroller to the present day.

For more than a century of national existence the power remained unquestioned, unless a single suggestion having reference to *one class* of warrants may be considered (5 Op., 645) as an exception. That merely affirmed that a balance certified by the Comptroller is so *conclusive* that a warrant drawn thereon is *thereby* necessarily “warranted by law,” and that after this the *Comptroller* has no jurisdiction “to review and reverse his own previous adjustment.” This recognizes the conclusive effect of the certified balance.

The question whether the process of accounting is to be considered *in limine*, or until the warrant in payment of a certified balance is finally delivered to the claimant, whether there is a *locus penitentiæ* (*ante*, 351; 15 Op. 198), or whether the power prior to that is *functus officio*, is not material to the present inquiry.

A balance certified by the Comptroller (Rev. Stats., 191) may be conclusive on *him*, as well as other officers, on the question that a warrant is “warranted by law,” and yet leave the question open for his decision as to the *legality* of a particular warrant as affected by the question as to the *party or officer in whose favor it is drawn*, or in *other respects*. And this leaves the duty to judge as to the legality of all *other warrants* (*ante*, 419) than those for the payment of certified balances.

But if the suggestion to which reference has been made (5 Op., 645) was designed to be general in its application, it grew out of that idea, once advanced, but never supported by authority, and long since discarded, that the head of a Department could control accounting officers “as to matters of law and the settlements and adjustments of accounts.” (5 Op., 647.)

It has been intimated that the proposition is inadmissible “that a subordinate officer created by statute can do any act binding upon the head of his Department until that force is *expressly* given to his decisions by plain and unambiguous law.” (Op. Oct. 22, 1881.)

The powers of all officers are given by statute. (The Floyd Acceptances, 7 Wall., 676.) Each can exercise the power given. It requires no more or clearer words to give power to an Auditor than to a President. To hold otherwise would do violence to language. It would derive authority from official position and dignity rather than law. It would adopt a new rule of construction. No court has ever said that language means more or less because applied to one officer than when applied to another. But if this could be otherwise the power of the Comptroller to judge is given in express terms while that of the Secretary is not given in equally clear language. If there were any difference between the power of the Comptroller and the Secretary in respect

of the degree of responsibility imposed by law in the matter of granting warrants, it could reasonably be held that the Comptroller incurs the greater degree, for the law vests in him, by *express words*, the power to decide as to whether the act directed to be done is "warranted by law;" and it does *not* expressly require the Secretary to so decide.

The authority of the Secretary is incidental or raised by inference, that of the Comptroller by express terms.

There can be no doubt, however, that the doctrine laid down by Hamilton, that the Secretary and Comptroller must each answer for the legality of the warrant, is the true one. The Secretary is by implication of law as fully bound as the First Comptroller to judge in every case as to whether the warrant—that is, the act commanded to be done—is, in that case, warranted by law. When, as in the case referred to, the act involves the question as to whether the money can lawfully be advanced *to the person in whose favor the warrant has been drawn*, there is obviously a duty on the part of the Comptroller to pass upon *that question*. In the opinion of the Attorney-General of October 22, 1881, it is said, as to the subject matter to which it refers, that the duty imposed on the Comptroller to countersign those warrants "which are warranted by law" and by force of this expression "may be satisfied by his *inquiry* whether any warrant for payment * * * is warranted by law, and that he *should* accept the decision of the Secretary as to the proper party in whose favor the warrant should be drawn."

That was in a case in which *an appropriation had already been carried to the credit of the officer in whose favor the warrant was drawn*. (Artificial-Limbs case, 2 Lawrence, Compt. Dec.) This opinion cannot apply to a case where no such action has been taken.

But this opinion concedes the power of the First Comptroller to make "inquiry whether any warrant for payment * * * is warranted by law."

With this concession the power to inquire in all respects whether a warrant is warranted by law necessarily follows. The statute gives no divided power. Its language is general, and the maxim of construction applies, *Generalia verba sunt generaliter intelligenda*. The authority to judge if a warrant is "warranted by law" is an authority to judge in all respects, not in some respects only. There is no mode prescribed by which to separate the duty of judging into parts.

The Attorney-General labors also under a misapprehension in respect to the effect of the Comptroller's counter-signature of the warrant. He says:

"In a recent opinion, concerning the relations of the Secretary of the

Interior and the Commissioner of Patents, I have considered the force of the words signature and counter-signature. The latter term, so far as I have discovered, conveys only the sense of attestation, and by countersigning the present warrant the First Comptroller attests to the Treasurer that an accountable requisition has been issued by the Secretary of War; that it had been duly countersigned by the Second Comptroller and registered by the Second Auditor; that the signature of the Secretary is genuine (see Bouvier's Law Dictionary, *title Counter-signature*); that the proper charges have been made under section 3675 in the books of the Secretary, First Comptroller, and Register (or Auditor); and that the appropriation therefor has not been exhausted. So that the Treasurer will be authorized, under section 305, to disburse the amount of the warrant without other evidence of the legality of the payment than the signature of the Secretary and the counter-signature of a Comptroller, and will not be required to inquire into the condition of the appropriation, or whether the forms required by law, antecedent to the signature and counter-signature, have been complied with."

The Comptroller does not attest that a requisition which does not come before him has been issued, or that it has been countersigned and registered, or that the proper entries have been made in the books of the Secretary, Register, or Auditor. The seal of the Treasury Department on the warrant is sufficient attestation of the Secretary's act and signature; and upon the question as to whether the appropriation has been exhausted, the law requires three distinct attestations: *First*, by the Secretary; *second*, by the Comptroller; and *third*, by the Register. (Rev. Stats., 248, 269, 313, 3675.) The Comptroller attests nothing but his own judgment as to whether the act commanded is in all respects authorized or warranted by law; and his counter-signature of the warrant is record evidence for all time, and for all parties concerned, of a judgment in the affirmative.

There is nothing in the definition of the word "countersign" which can detract from or impair a duty required by statute. If its purpose be to "authenticate" or "attest" a warrant, it cannot be authentic, valid, or operative, without such authentication or attestation. And the plain requirement of the statute is that the authentication or attestation shall not be given except to such warrants as are "warranted by law."

Hamilton declared as to warrants that "before they can take effect" the Comptroller's action is necessary, as no warrant can be valid unless he "concurs in authorizing" by the warrants the payments thereby to be made. The order in which duties are to be performed—the signing first by the Secretary and the countersigning afterwards by the First Comptroller—cannot change the effect of the obligations, duties, or powers conferred by statute. The time when or order in

which a statutory power is to be exercised does not measure or affect its character or extent. It is derived from the language of the statute and its purpose. The last court which acts in a given case is not controlled in its action on a question of law by that of any prior court. And this is generally true of action by executive officers. It cannot well be supposed that Congress intended that the First Comptroller, charged with judging as to the legal validity of every voucher presented by the Treasurer of the United States in the settlement of his vast accounts (Rev. Stats., 272, 305), should employ his time as a mere *ministerial witness* of the genuineness of the signature of the Secretary, already bearing the authentication of the great seal of the Department.

Another misapprehension on the part of the Attorney-General arises from his inference that in case of conflicting decisions as to the legality of a warrant on the part of the Secretary and Comptroller, there is, somewhere in the executive branch of the Government, a power authorized to decide in such case. There is no such power. Such a power would be inconsistent with the principles of discretionary trusteeship which were intended by Congress to control the matter of authorizing issues or payments of moneys out of the public treasury. The Attorney-General says in relation to this supposed power:

"The present controversy would be fairly presented if there were before the Secretary of the Treasury two requisitions, one from the Secretary of War and the other from the Secretary of the Interior, for this appropriation. Now, if the law meant that the First Comptroller were to decide between the two, and the Secretary of the Treasury was to have no discretion, but simply register the decrees of the First Comptroller, the language of the law would be more apt if it directed the First Comptroller to sign and the Secretary of the Treasury to countersign; and it would contribute greatly to the expedition of business if the law required the requisition to go to the Comptroller first (as in the case of accounts), instead of having the Secretary sign a warrant, which, upon the refusal of the Comptroller to countersign, must be returned to the Secretary for cancellation and reissue.

"The language of the Supreme Court in the case of *United States vs. Jones*, 18 Howard, 95, seems to me applicable to the present question:

"The Secretary of the Navy represents the President, and exercises his power on the subjects confided to his Department. He is responsible to the people and the law for any abuse of the powers intrusted to him. His acts and decisions on subjects submitted to his jurisdiction and control by the Constitution and the laws do not require the approval of any officer of another Department to make them valid and conclusive. The accounting officers of the Treasury have not the burden of responsibility cast upon them of revising the judgments, correcting the supposed mistakes, or annulling the orders of the heads of Departments."

"In the *Real Estate Savings Bank of Pittsburgh vs. The United States*, 16 Court of Claims, Richardson, J., in delivering the opinion of the Court, quotes section 191, Revised Statutes, and adds, 'In other respects, the Comptrollers are as much subject to the rules, regulations,

and general directions of the Secretary of the Treasury, and as much bound to obey and be governed by them, as are all other subordinate officers in the Treasury Department.'

"In conclusion, I would say that, upon the matter in controversy, the decision of the Secretary of the Treasury is binding upon the First Comptroller."

It has been already shown that the language of the Supreme Court in *United States vs. Jones* has not the general application claimed for it by the Attorney-General; and that the action of the Comptroller on a Treasury warrant is not in any sense a revision of the judgment of the Secretary. In that case no question was presented, considered, or decided as to the authority of the First Comptroller to judge whether a warrant is "warranted by law." A totally different question was before the court, and mere *obiter dicta* in other courts are not to be deemed authoritative. The law imposes upon each of these officials a duty to exercise an untrammelled discretion; neither of them can control the judgment or correct the supposed mistakes of the other; and no valid order can be made by either in the matter of issuing a warrant unless both concur in judgment as to its legality.

While it is true that the Secretary of the Treasury is authorized to make rules and regulations for the guidance and conduct of all the subordinate officials, officers, and employes in the fiscal branch of the Executive Department, in certain cases, it is also true that no such orders or regulations can be, or are, in contemplation of law intended to be so binding upon any officer therein as to justify him in doing an act contrary to his judgment as to its legality, when the law clothes him with a jurisdiction and expressly requires him to judge.

And, as already shown, accounting officers exercise a jurisdiction intrusted to them by law, which neither the President nor head of a Department can exercise or control in matters of judgment, except in special cases under rare statutes giving express authority for that purpose, or under those which in some cases authorize the exercise of discretionary power.*

*CORRECTION.—On page 542, *ante*, the first sentence of the fourth paragraph should read thus:

There are two classes of cases, both very limited, in which accounting officers are required generally to accept as conclusive the decision of other officers, in the allowance of claims, *first*, when by statute such allowance is expressly made *conclusive*; and *second*, when heads of Departments or other officers are, by statute, required to exercise a *discretion* as to the manner and amount of expenditures under an appropriation.

CHAPTER XIII.

REGULATIONS OF THE TREASURY DEPARTMENT IN RELATION TO
UNITED STATES BONDS.

TREASURY DEPARTMENT,

Office of the Secretary, Washington, D. C., April 9, 1881.

The following REGULATIONS in regard to transactions with this Department in UNITED STATES BONDS are published for the information of all concerned, and will supersede all other Regulations on the same subject heretofore issued.

WILLIAM WINDOM,

Secretary.

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REGULATIONS OF THE TREASURY DEPARTMENT IN RELATION TO UNITED STATES BONDS.

BONDS OF THE UNITED STATES.

The original issues of the bonds of the United States under the several authorizing acts of Congress enumerated below are divided into **COUPON AND REGISTERED BONDS**. Of these issues the following were the

BONDS OUTSTANDING AND BEARING INTEREST ON DECEMBER 1, 1879:

Title of loan and authorizing act.	Denominations.	Rate of interest.	When redeemable or payable.
OREGON-WAR LOAN: March 2, 1861—Coupon.....	\$50; \$100; \$500.....	6 per ct...	Redeemable twenty years from July 1, 1861.
SIXES OF 1881: July 17 and August 5, 1861— Coupon	\$50; \$100; \$500; \$1, 000 ..	6 per ct...	Redeemable after June 30, 1881.
Registered.....	\$50; \$100; \$500; \$1, 000; \$5, 000; \$10, 000.		
SIXES OF 1881: March 3, 1863—Coupon.....	\$50; \$100; \$500; \$1, 000 ..	6 per ct...	Redeemable after June 30, 1881.
Registered	\$50; \$100; \$500; \$1, 000; \$5, 000; \$10, 000.		
CURRENCY 6 ¹ / ₄ , PACIFIC RAILROAD: July 1, 1862, and July 2, 1864— Registered.....	\$1, 000; \$5, 000; \$10, 000.	6 per ct...	Payable thirty years after issue. (Dates of issue, 1865 to 1869.)
FUNDED LOAN OF 1881: July 14, 1870, and January 20, 1871—Coupon	\$50; \$100; \$500; \$1, 000; \$5, 000; \$10, 000.	5 per ct...	Redeemable after May 1, 1881.
Registered	\$50; \$100; \$500; \$1, 000; \$5, 000; \$10, 000; \$20, 000; \$50, 000.		
FUNDED LOAN OF 1891: July 14, 1870, and January 20, 1871—Coupon	\$50; \$100; \$500; \$1, 000 ..	4½ per ct...	Redeemable after September 1, 1891.
Registered.....	\$50; \$100; \$500; \$1, 000; \$5, 000; \$10, 000; \$20, 000; \$50, 000.		
CONSOLS OF 1907: July 14, 1870, and January 20, 1871—Coupon	\$50; \$100; \$500; \$1, 000 ..	4 per ct...	Redeemable after July 1, 1907.
Registered.....	\$50; \$100; \$500; \$1, 000; \$5, 000; \$10, 000; \$20, 000; \$50, 000.		



The following are the

BONDS WHICH HAVE MATURED AND CEASED TO BEAR INTEREST.

Title of loan and authorizing act.	Denominations.	Rate of interest.	When redeemable or payable.
LOAN OF 1858: June 14, 1858—Coupon	\$1, 000	5 per ct...	Redeemable after fifteen years from January 1, 1859.
Registered	\$5, 000.		
FIVES OF 1860: June 22, 1860—Coupon	\$1, 000; \$5, 000	5 per ct...	Redeemable after ten years from January 1, 1861.
Registered	\$1, 000; \$5, 000.		
FIVE-TWENTIES OF 1862: February 25, 1862—Coupon	\$50; \$100; \$500; \$1, 000.	6 per ct...	Redeemable after five and payable twenty years from May 1, 1862.
Registered	\$50; \$100; \$500; \$1, 000; \$5, 000; \$10, 000.		
FIVE-TWENTIES OF 1864: March 3, 1864—Registered	\$100; \$500; \$1, 000; \$5, 000.	6 per ct...	Redeemable after five and payable twenty years from November 1, 1864.
TEN-FORTIES: March 3, 1864—Coupon	\$50; \$100; \$500; \$1, 000.	5 per ct...	Redeemable after ten and payable forty years from March 1, 1864.
Registered	\$50; \$100; \$500; \$1, 000; \$5, 000; \$10, 000.		
FIVE-TWENTIES OF 1864: June 30, 1864—Coupon	\$50; \$100; \$500; \$1, 000.	6 per ct...	Redeemable after five and payable twenty years from November 1, 1864.
Registered	\$50; \$100; \$500; \$1, 000; \$5, 000; \$10, 000.		
FIVE-TWENTIES OF 1865: March 3, 1865—Coupon	\$50; \$100; \$500; \$1, 000.	6 per ct...	Redeemable after five and payable twenty years from November 1, 1865.
Registered	\$50; \$100; \$500; \$1, 000; \$5, 000; \$10, 000.		
CONSOLS OF 1865: March 3, 1865—Coupon	\$50; \$100; \$500; \$1, 000.	6 per ct...	Redeemable after five and payable twenty years from July 1, 1865.
Registered	\$50; \$100; \$500; \$1, 000; \$5, 000; \$10, 000.		
CONSOLS OF 1867: March 3, 1865—Coupon	\$50; \$100; \$500; \$1, 000.	6 per ct...	Redeemable after five and payable twenty years from July 1, 1867.
Registered	\$50; \$100; \$500; \$1, 000; \$5, 000; \$10, 000.		
CONSOLS OF 1868: March 3, 1865—Coupon	\$50; \$100; \$500; \$1, 000.	6 per ct...	Redeemable after five and payable twenty years from July 1, 1868.
Registered	\$500; \$1, 000; \$5, 000; \$10, 000.		
SIXES OF 1860: February 8, 1861—Coupon	\$1, 000	6 per ct...	Payable after December 31, 1860.
Registered ..	\$1, 000; \$5, 000; \$10, 000.		

COUPON BONDS.

The coupon bonds of the United States are payable to bearer, and they pass by delivery, without indorsement; except those authorized by the act of March 2, 1861—known as the *Oregon-War Loan*—which, being payable to certain parties or their assigns, are transferable only by assignment; such assignment to be executed and acknowledged in like manner as in the case of registered bonds of other loans.

Coupon bonds, with the exception above mentioned, are convertible into registered bonds of the same loan; but the law does not authorize the conversion of registered into coupon bonds.

Coupon bonds forwarded to the Department for exchange into registered bonds should be addressed to the SECRETARY OF THE TREASURY, Loan Division; and when bonds of more than one issue are transmitted in the same package, a separate letter of explicit instructions should accompany the bonds of each issue.

Form of Letter for Conversion of Coupon Bonds of Funded Loans into Registered Bonds.

_____, _____, 18—.

HON. SECRETARY OF THE TREASURY,
Washington, D. C.

SIR: Herewith I send \$_____ U. S. coupon bonds of the act of July 14, 1870, four-per-cent. loan, consols of 1907; which please exchange into registered bonds of the same loan, in the name of _____.

Please send the new bonds to the subscribed address.

Mail checks for the interest thereon to _____, _____.

Very respectfully,

_____, _____.

Form of Letter for Conversion of Coupon Bonds of other Loans into Registered Bonds.

_____, _____, 18—.

HON. SECRETARY OF THE TREASURY,
Washington, D. C.

SIR: Herewith I send \$_____ U. S. coupon bonds of the act of _____, 18—; which please exchange into registered bonds of the same loan, in the name of _____.

Please send the new bonds to the subscribed address.

Make the interest thereon payable at _____.

Very respectfully,

_____, _____.

REGISTERED BONDS.

The registered bonds of the United States differ from the coupon bonds in the following respects, namely: (1) They have inscribed or expressed upon their face the names of the parties who own them, denominated *payees*; (2) they are payable only to such payees or their assigns; and (3) the property or ownership in them can be transferred only by assignment. For the purpose of assigning them, there are forms printed on the backs of the bonds, together with directions to be followed in the execution of such assignments.

A ledger account is opened in the Department with each holder of one or more registered bonds; and in this account each bond is fully described. All recognized transfers must be made upon the loan-books in the Register's office.

Transmission of Bonds.

When registered bonds are properly assigned, they should be transmitted to the Register of the Treasury, and be accompanied by a letter of explicit instructions—stating the amount enclosed; the loan to which the bonds belong; the denominations of the bonds desired in exchange therefor; the name and residence of each assignee; and giving full particulars with regard to the payment of interest—in order that the new bonds may be issued in a proper manner, and the requisite entries be made on the books of this Department.

When bonds of different loans are forwarded in one remittance, a separate letter of instruction should accompany the bonds of each loan.

Letters of instructions sent with bonds of the funded five-per-cent. loan of 1881, the funded four-and-a-half-per-cent. loan of 1891, and the four-per-cent. consols of 1907, transmitted for transfer, should state the residence of the assignee and contain the address to which quarterly-interest checks should be mailed.

New Bonds.

Registered bonds received for transfer are cancelled, and new bonds in their stead are issued in the name of the assignee. These bear interest from the first day of the quarter or half-year (as their interest-term may run) in which the transfer shall have been made. As a rule, returns are made on the same day that the bonds are received, and made invariably by mail, unless otherwise instructed. When bonds are sent, or returned, by express or by registered mail, the entire expense thus incurred must be borne by the party desiring the transfer.

Form of Letter for Transfer of Bonds of Funded Loans.

_____, _____, _____, 18—.

Hon. REGISTER OF THE TREASURY,
Washington, D. C.

SIR: Herewith you will receive \$_____ U. S. registered bonds of the 4½ per cent. funded loan of 1891; which please transfer, as per assignment, to _____, of _____.

Please send the new bonds to the subscribed address.

Mail checks for the interest thereon to _____, _____, _____.

Very respectfully,

_____, _____,
_____, _____.

Form of Letter for Transfer of other Bonds.

_____, _____, _____, 18—.

Hon. REGISTER OF THE TREASURY,
Washington, D. C.

SIR: Herewith you will receive \$_____ U. S. registered bonds of the loan of _____; which please transfer, as per assignment, to _____.

Please send the new bonds to the subscribed address.

Make the interest thereon payable at _____.

Very respectfully,

_____, _____,
_____, _____.

PAYMENT OF INTEREST AND CLOSING OF TRANSFER-BOOKS.

The interest on registered bonds of the various loans falls due upon the following dates respectively:

Loan of February 8, 1861	January 1; July 1.
Loan of July 17, 1861, and August 5, 1861	January 1; July 1.
Loan of March 3, 1863	January 1; July 1.
Currency Sixes, Pacific Railroad	January 1; July 1.
Five-per-cent. Funded Loan of 1881	February 1; May 1; August 1; November 1.
Four-and-a-half-per-cent. Funded Loan of 1891	March 1; June 1; Sept. 1; Dec. 1.
Four-per-cent. Consols of 1907	January 1; April 1; July 1; October 1.

Interest on registered bonds of the funded loans of 1881 and 1891, and the four-per-cent. consols of 1907, is paid only by checks drawn at this Department. These checks will be sent by mail when the post-

office address is known; when this is not known, they will be held by the Treasurer of the United States until called for by the payees thereof. The checks are payable, when properly indorsed, on presentment at any of the offices for the payment of interest named in the following list. Holders of these bonds should promptly notify the Register of the Treasury of any change in their post-office address; and, in case of the appointment of an attorney to collect the interest, notice of this fact should likewise be given to the Register, in order that the checks may be sent to the care of such attorney. Such holders should also transmit to the First Auditor of the Treasury all powers of attorney for the collection of interest, and advise him, specifically, at which of the offices hereafter named it is desired that the interest-checks under such powers should be paid.

The payment of interest by Treasury checks is confined to the bonds of the funded loans above mentioned.

Interest on registered bonds of the other loans may be made payable at any of the offices for payment of interest embraced in the list given below, some one of which must be designated for that purpose by each payee. The dividends are payable, on application in person, to the payee, or to his duly authorized attorney.

For the purpose of preparing the interest-schedules, the transfer-books are closed during the month immediately preceding the date of payment of the interest.

If bonds forwarded for transfer be not received prior to or upon the day fixed for closing the transfer-books, the transfer will not be effected until after the reopening of the books; and consequently the interest for that quarter or half-year (as the interest-term may be) will be declared in favor of the parties whose names appear upon the face of the old bonds.

The place of payment will be changed if a request to that effect be made to the Register of the Treasury before the time for the closing of the transfer-books.

Offices for the Payment of Interest.

Treasury of the United States.....	Washington, D. C.
Office of Assistant Treasurer U. S.	Baltimore, Md.
Do.....do.....	Philadelphia, Pa.
Do.....do.....	New York, N. Y.
Do.....do.....	Boston, Mass.
Do.....do.....	Cincinnati, Ohio.
Do.....do.....	Chicago, Ill.
Do.....do.....	St. Louis, Mo.
Do.....do.....	New Orleans, La.
Do.....do.....	San Francisco, Cal.

ASSIGNMENTS OF BONDS AND COLLECTION OF INTEREST.

Assignments.

The directions printed on the backs of the bonds should be carefully followed in the execution of assignments, and all the blank spaces filled in properly. The name of the assignee should be written plainly in the space left for that purpose.

If a bond is to be divided among two or more parties, their names and the amount to each should be stated in the assignment. If only a part of a bond is assigned, a new issue for the remainder will be made to the former payee of the whole bond: *Provided*, however, That the amount assigned shall correspond with one or more of the denominations in which the bonds are issued.

Registered bonds should not be assigned in blank, as such assignment would make them payable to bearer and render them available to any holder thereof; in other words, under an assignment in blank the title to the bonds would pass by delivery.

A detached assignment should never be resorted to, except when the blank form for an assignment which is printed on the bond shall have been already used; and in this case only when there shall not be sufficient space on the back of the bond for another assignment.

The payee should sign his name to the assignment as the name is written on the face of the bond. If the bond be issued to a firm, the assignment must be subscribed in the name of the firm by a member thereof who shall be possessed of authority to sign for the firm, of which authority the officer witnessing the signature must be satisfied; if issued to joint owners, co-trustees, executors, administrators, or guardians, each person must sign for himself; if to a corporation or company, the official character of the person executing the assignment, and the authority of such person to dispose of the bond or bonds in question, should be duly verified by vote or resolution of the board of directors of the corporation or company, certified under its seal. Where such officer is authorized by virtue of his office to execute the assignment, a certificate, under seal, of this fact and of his election to the office, and that he still holds and exercises such office, must be furnished, together with a certified copy of the charter or by-laws of such corporation or company, showing the authority claimed thereunder.

All such evidence of authority will be placed on file in the Department, and need not be reproduced in subsequent transactions under the same power, if proper reference be made thereto.

Assignments by Representatives and Successors.

In case of death or successorship, the representative of the deceased person, or the successor, must furnish official evidence of such decease or successorship, and of his own appointment, authority, or power. An executor or administrator may assign bonds standing in the name of the deceased person in whose stead such executor or administrator shall be acting. Where there are two or more legal representatives, all must unite in the assignment, unless by a decree of court or testamentary provision some one or more of them is or are designated and empowered to dispose of the bonds. If the bonds had been held by the deceased in the capacity of a fiduciary or trustee, the letters testamentary, or of administration, must be accompanied by an order of the court authorizing the contemplated transfer.

An executor, administrator, trustee, guardian, or attorney cannot assign bonds to himself, unless he be specially authorized to do so by a court possessing jurisdiction of the matter.

Foreign Successorship Assignments.

Where a payee, at the time of his death, was a resident of a foreign country, the party claiming to direct and execute the transfer must furnish an exemplified copy of the will or other instrument conveying the requisite authority, duly certified under the hand and seal of the proper officer, attested by the certificate of a United States minister, chargé, consul, vice-consul, or commercial agent, or, if there be none such accessible, (which fact shall, in such case, be certified,) by that of a notary public, to the effect that such exemplified copy is executed and granted by the proper tribunal or officer, and is in due form and according to the laws of that country. The assignment should be executed as hereinbefore directed.

Assignments by Attorney.

Persons entitled to assign bonds may appoint for that purpose an attorney, who, by virtue of the authority so conferred, can execute the assignment in the same manner as provided for the constituent.

No officer of the Treasury of the United States should be selected as such attorney.

Powers of attorney authorizing the assignment of bonds should be sent, for record, to the Register of the Treasury.

Form of Power.

KNOW ALL MEN BY THESE PRESENTS:

That I, _____, do hereby appoint _____ my attorney, to assign any and all United States bonds now standing (or which may hereafter stand) in my name

on the books of the Treasury Department, granting to said attorney full power to appoint one or more substitutes for that purpose, hereby ratifying and confirming all that may be lawfully done by virtue hereof.

Witness my hand and seal, this the — day of —, A. D. 18—.

Executed before us, this the — day of —, A. D. 18—. [SEAL.]

[Two witnesses.]

The acknowledgment for one or more persons may be as follows:

STATE OF —, }
County of —, } ss:

BE IT KNOWN, That on the — day of —, 188—, before me, —, personally appeared —, to me personally well known to be the identical person named in the foregoing power of attorney, who in my presence subscribed and acknowledged the said power of attorney to be his act and deed; *and I do hereby certify that the said power of attorney was read and fully explained to the said — at the time of acknowledgment*, and that he declared himself to be satisfied therewith.

In testimony whereof, I have hereunto set my hand and affixed my — seal the day and year aforesaid.

To be acknowledged before an officer having authority to witness assignments of bonds.

This instrument must be signed in the presence of two persons, who must sign their names as witnesses.

The residence of both parties must be distinctly stated.

The indorsement by the attorney:

Name of payee:

By —, Attorney-in-fact.

The acknowledgment of a partnership may be as follows:

STATE OF —, }
County of —, } ss:

Be it known, That on the — day of —, 188—, before me, —, personally appeared —, a member of said copartnership, to me personally well known to be such, and who in my presence signed the copartnership name to the foregoing power of attorney, and acknowledged the said power of attorney to be the act of said copartnership firm; *and I do hereby certify that the said power of attorney was read and fully explained to the said — at the time of acknowledgment*, and that he declared himself to be satisfied therewith.

In testimony whereof, I have hereunto set my hand and affixed my — seal, the day and year aforesaid.

* Indorse thus:

[Name of payee:]

By —, Attorney-in-fact.

The following instructions must be particularly observed and complied with, viz:

1st. The power of attorney should be executed in the copartnership name.

2d. The signature must be made in the presence of two witnesses.

3d. The place of business of the firm must be distinctly stated in the body of the instrument.

4th. To be acknowledged before an officer having authority to witness assignments of bonds.

Form of Authority by Vote.

At a meeting of the Board of Directors of the _____, of _____, held _____, 18—, it was, on motion,

“Resolved, That the president and treasurer are, or either of them is, hereby authorized and empowered to assign any and all United States bonds now standing (or which may hereafter stand) in the name of this bank [or institution].”

THIS IS TO CERTIFY, That at a *regular* meeting of the Board of Directors of _____, duly held at _____, on the _____ day of _____, 188—, the foregoing resolution was adopted, and is now in full force.

Witness our hands and the corporate seal, this _____ day of _____, A. D. 188—.

_____, *President.*
_____, *Secretary.*

[Corporate seal.]

The resolutions should be certified by officers of the bank or institution other than the one empowered to assign the bonds.

It is recommended that resolutions be adopted only at *regular* meetings. But when passed at a special meeting, the certificate may be as follows:

We certify that at a *special* meeting of the Board of Directors of _____, duly held at _____, on the _____ day of _____, at _____ o'clock — M., 1881, the foregoing resolution was adopted, and is now in full force.

And we certify that notice was duly given, personally, to all members of the said Board of Directors of the said time and place of said meeting, and of the object thereof, for more than _____ days prior thereto, and in time to enable all to attend said meeting; and that at such meeting so held a quorum of all the members of said board was present and voted for the adoption of said resolution.

Witness, &c.

Form of Authority under By-laws.

At the regular annual meeting of the stockholders of the _____, of _____, held _____, 18—, _____ was duly elected president, and _____ was duly elected cashier; and as such they are jointly or severally empowered by the by-laws (a certified copy of which is hereto annexed) to sell and assign any and all United States bonds now standing (or which may hereafter stand) in the name of this bank [or institution].

_____,
Secretary.

[Seal of Bank or Institution.]

ACKNOWLEDGMENTS

Of assignments, when not made at this Department, must be made before an assistant treasurer of the United States, a United States judge or district attorney, clerk of a United States court, collector of customs or internal revenue, or president or cashier of a National Bank.

A notary public is authorized to take acknowledgments on all loans, except the funded loans of 1881 and 1891, and the consols of 1907. On these three loans the president or cashier of a National Bank is, instead of a notary public, authorized to take acknowledgments. The witnessing officer should append his official title, and affix his seal of office, if he have one. If he have no seal of office, he should certify such to be the fact. The president or cashier of a National Bank must append the title and affix the seal of the bank. The impress of the seal must in every case be made upon the bond.

FOREIGN ACKNOWLEDGMENTS

May be made before a United States minister, chargé, consul, vice-consul, or commercial agent. A notary public, or other competent officer, in a foreign country may take acknowledgments; but his official character and jurisdiction must be properly verified.* The official seal, where there is one, should in all cases be affixed, as per foregoing direction; and, where there is none, this fact should be made known and attested.

EXECUTION OF POWERS.

Powers of attorney for the transfer of bonds must be acknowledged in the presence of some one of the officers authorized to take acknowledgments of assignments; and where such officer has an official seal, it must be affixed; where he has none he should so state. Powers for collection of interest should follow the same general form above indicated,† and be lodged with the First Auditor of the Treasury.

POWERS OF SUBSTITUTION

Must be executed and acknowledged in the same manner as powers of attorney, and should likewise follow the same general form.

NO FEES

Will be charged by a United States minister, chargé, consul, vice-consul, or commercial agent for witnessing and certifying an assignment of, or power to assign, bonds, or collect interest thereon. No charge is made by the Department for transferring registered bonds, or for changing coupon bonds into registered bonds.

TRANSLATIONS.

Powers of attorney, and all other legal documents executed in the United States, must be in the English language. If executed abroad in any other language, such powers must be accompanied by an accurate translation into English, and by a sworn certificate of the person who made such translation, properly acknowledged before a notary public or other competent officer having a seal, to the effect that the translation is correct and complete.

EXECUTION OF POWERS OF ATTORNEY TO COLLECT INTEREST.

Powers of attorney must be acknowledged by constituents before the Treasurer of the United States or an assistant treasurer, United States judge, United States district attorney, clerk of United States court,

* See under head "Foreign Successorship Assignments," page 567.

† See page 566.

collector of customs, collector of internal revenue, president or cashier of a National Bank, or a notary public.

The execution of a power of attorney in a foreign country must be acknowledged before a United States minister, chargé, consul, vice-consul, or commercial agent. If before a notary public or other competent officer, his official character and jurisdiction must be properly verified.

In all cases of acknowledgments, the officer must add his official designation, residence, and seal if he have one; if he have no seal of office, he should certify such to be the fact.

All powers of attorney and testamentary evidence, designed as authority to collect interest, should be filed with the First Auditor of the Treasury.

Power of Attorney to Collect Interest upon United States Bonds.

KNOW ALL MEN BY THESE PRESENTS, That _____, of _____, do appoint _____ attorney to receive from the proper officer, and full discharge for the same to give, all interest *_____ name on the books of the Treasury Department of the United States; granting to said attorney power _____ to appoint one or more substitutes for the purposes herein expressed; hereby ratifying and confirming all that may lawfully be done by virtue hereof.

Witness _____ hand- and seal- this _____ day of _____, 188—.

Signed, sealed, and acknowledged } _____ [L. S.]
in the presence of— } _____ [L. S.]
_____.

To be acknowledged and certified in the same manner as powers for the assignment of bonds. (See pages 566, 567.)

*When intended to be special, insert [due on the _____ day of _____, 188—, on all bonds standing in _____.]

*When intended to be general, insert [now due and which may hereafter accrue on all bonds standing, or which may hereafter stand, in _____.]

Authority for the Collection of Interest on United States Registered Bonds.

At a regular meeting of _____, held on the _____ day of _____, 188—, a quorum being present, it was, on motion,

Resolved, That _____ be, and is hereby, authorized to receipt for, or to indorse checks for interest due, or to become due, on all United States bonds registered in the name of _____, on the books of the Treasury Department, with power to appoint one or more substitutes for the purposes herein expressed, until such authority is officially revoked, and notice of revocation is properly given to the Treasury Department.

A true copy of the minutes:

_____,
President.

[SEAL.]
Attest:

_____,
Secretary.

NOTE.—Where the Society or Institution has no *seal*, it will be requisite to acknowledge the instrument before a notary or some other competent officer having an official seal. If the authority to collect interest be executed to the president, secretary, or treasurer, the instrument must be certified by officers *other than the one* empowered to indorse the checks.

The First Auditor of the Treasury should be advised where checks issued for interest will be presented for redemption; otherwise, checks will not be paid by the Treasurer or assistant treasurers of the United States.

Circular—Payment of Interest on United States Registered Bonds inscribed in the Names of Minors.

1881.
DEPARTMENT NO. 6. }
Secretary's Office.

TREASURY DEPARTMENT,

*Office of the Secretary,**Washington, D. C., February 7, 1881.*

The following synopsis of the decision of the First Comptroller of the Treasury, of February 4, 1881, respecting the payment of interest on United States registered bonds inscribed in the names of minors, is published for the information and guidance of the officers of this Department:

1. When Government bonds are registered in the names of infants, interest-checks issued in payment of interest thereon will be delivered and paid only to the proper guardian of such infants when the Secretary of the Treasury has been notified of such infancy.

2. Neither the father nor mother of an infant has the right, as a general rule, to indorse or collect such interest-checks.

3. The guardian of an infant, in order to indorse and collect interest-checks in favor of his ward, is required to file with the First Auditor evidence (1) of guardianship, (2) of his authority being in force, and (3) of the identity of his ward as the payee in the bonds.

4. The Government is not liable to refund to an infant, on his arriving at the age of majority, money paid to him on his indorsement of interest-checks during minority, when the Secretary of the Treasury had not been notified of the fact of infancy.*

JOHN SHERMAN,

Secretary.

*In explanation of this the First Comptroller states as follows:

1. A duly certified copy of the letters of guardianship will be evidence of guardianship. In those States in which no letters issue, a certified copy of the appointment by the proper court showing that the guardian gave bond and accepted the trust will be sufficient. If the appointment does not show acceptance, this may be proved by the affidavit of the guardian, or the certificate of the proper court. (State *vs.* Sloane, 20 Ohio, 327; Lessee of Maxsom *vs.* Sawyer, 12 Ohio, 195; Lessee of Perry *vs.* Brainard, 11 Ohio, 442; Shroyer *vs.* Richmond and Staley, 16 Ohio State, 455.)

2. It will be sufficient evidence that the authority of the guardian is in force if the clerk or judge of the proper court shall certify the age of the infant as shown in the record and that the authority of the guardian is in force, with a reference to the statute showing the duration of the office of guardian; or this may be shown by affidavit, as follows:

STATE OF OHIO, }
Logan County, } ss:

I, James Smith, being duly sworn, do, on oath, say that I am a resident citizen of said county and State; that I am the identical person who is the duly appointed, qualified, and acting guardian of Lelia L. Finley, who resides at No. 17 High street, in the city of Bellefontaine, in said county; that she was aged 15 years June 1, 1860, and that my authority as such guardian is in force. The duration of my office of guardian is prescribed by sections 6254-6260 of the Revised Statutes of Ohio.

JAMES SMITH.

INTEREST TO JOINT HOLDERS.

Interest will be paid to any one of several joint holders, or co-trustees, executors, administrators, or guardians; but in the execution to a third party of a power to collect, all must join. In case of the death of any of such joint holders, co-trustees, &c., the survivor or survivors will be recognized as having full authority, upon due proof of such death and survivorship.

UNCLAIMED INTEREST.

If the interest on registered bonds of the loans authorized previously to the funded loans (act of July 14, 1870) be not called for within seven months after its maturity, it will be returned to the Treasury as unclaimed, and can then be collected only in person or by attorney at the office of the Treasurer of the United States in Washington.

Sworn to by said James Smith before me, and by him subscribed in my presence, this day, at my office in Bellefontaine aforesaid. And I certify that said James Smith is personally well known to me to be the identical person who is said guardian above named, and that he is a credible person.

In witness whereof, I hereto subscribe my name and affix my notarial seal at my office in Bellefontaine aforesaid.

APRIL 20, 1881.

[Notarial seal.]

JAMES STEEN,
Notary Public in and for said County.

The form of a certificate by a clerk or judge of court may readily be prescribed by reference to the foregoing form of affidavit.

3. The identity of the ward as the payee in a bond may be shown by affidavit, thus:

STATE OF OHIO, }
Logan County, } ss:

Personally appeared before me, James Steen, a notary public in and for said county and State, at my office therein, James Smith, who, being by me duly sworn according to law, deposes and says, that he is the duly appointed, qualified, and acting guardian of Mary Cole, who resides at No. 17 High street, in the city of Bellefontaine, in said county; that his authority as said guardian is in force, and that said Mary Cole is the identical person who is the owner of registered bond known as one of the consols of 1907 of the United States, No. 960, for \$1,000, issued under the acts of Congress of July 14, 1870, and January 20, 1871, registered in her name on the books of the Register's Office, in the Department of the Treasury of the United States, and that she is still the owner of said bond.

JAMES SMITH.

Sworn to by said James Smith, before me, and by him subscribed in my presence this day, at my office in Bellefontaine aforesaid. And I certify that said James Smith is personally well known to me to be the identical person who is said guardian above named, and that he is a credible person.

In witness whereof, I hereto subscribe my name and affix my notarial seal at my office in Bellefontaine aforesaid.

APRIL 20, 1881.

[Notarial seal.]

JAMES STEEN,
Notary Public in and for said County.

A guardian holds Government bonds subject to the legislation of Congress, to which all State legislation must yield. (*United States vs. Hall*, 98 U. S., 357; *Sallu's case*, 1 Lawrence, Compt. Dec., 236; *Klink's case*, *Id.*, 252; *Safford's case*, *Id.*, 284.)

For the convenience of the public, and to save charges, powers to collect specified unclaimed interest may be made in favor of the CHIEF OF THE DIVISION OF LOANS AND CURRENCY of the Secretary's Office, under authority of the following order:

"TREASURY DEPARTMENT,
"Office of the Secretary, May 1, 1879.

"ORDERED: That, from and after this date, the *pro forma* receipt on the books of this Department for interest on registered bonds of the United States, due claimants who do not desire to employ resident attorneys, may be signed by the CHIEF OF THE DIVISION OF LOANS AND CURRENCY of this office, or, in his absence, by the ACTING CHIEF of said Division, as attorney for the claimants:

"That checks in payment of such interest drawn by the Treasurer of the United States in favor of the claimants be transmitted to their address by the officer acting as attorney.

"JOHN B. HAWLEY,
"Acting Secretary."

DESTROYED AND DEFACED BONDS AND LOST REGISTERED BONDS OF
THE UNITED STATES.

The following are the provisions of the Revised Statutes of the United States for relief in cases of bonds which have been defaced, destroyed, or lost:

DUPLICATES FOR DESTROYED OR DEFACED BONDS.

SEC. 3702. Whenever it appears to the Secretary of the Treasury, by clear and unequivocal proof, that any interest-bearing bond of the United States has, without bad faith upon the part of the owner, been destroyed, wholly or in part, or so defaced as to impair its value to the owner, and such bond is identified by number and description, the Secretary of the Treasury shall, under such regulations and with such restrictions as to time and retention for security or otherwise as he may prescribe, issue a duplicate thereof, having the same time to run, bearing like interest as the bond so proved to have been destroyed or defaced, and so marked as to show the original number of the bond destroyed and the date thereof. But when such destroyed or defaced bonds appear to have been of such a class or series as has been or may, before such application, be called in for redemption, instead of issuing duplicates thereof, they shall be paid, with such interest only as would have been paid if they had been presented in accordance with such call.

SEC. 3703. The owner of such destroyed or defaced bond shall surrender the same, or so much thereof as may remain, and shall file in the Treasury a bond in a penal sum of double the amount of the destroyed or defaced bond, and the interest which would accrue thereon until the principal becomes due and payable, with two good and sufficient sureties, residents of the United States, to be approved by the Secretary of the Treasury, with condition to indemnify and save harmless the United States from any claim upon such destroyed or defaced bond.

DUPLICATES FOR LOST REGISTERED BONDS.

SEC. 3704. Whenever it is proved to the Secretary of the Treasury, by clear and satisfactory evidence, that any duly registered bond of the United States, bearing interest, issued for valuable consideration in pursuance of law, has been lost or destroyed, so that the same is not held by any person as his own property, the Secretary shall issue a duplicate of such registered bond, of like amount, and bearing like interest and marked in the like manner as the bond so proved to be lost or destroyed.

SEC. 3705. The owner of such missing bond shall first file in the Treasury a bond in a penal sum equal to the amount of such missing bond, and the interest which would accrue thereon, until the principal thereof becomes due and payable, with two good and sufficient sureties, residents of the United States, to be approved by the Secretary of the Treasury, with condition to indemnify and save harmless the United States from any claim because of the lost or destroyed bond.

These statutory provisions are supplemented by regulations of the Department as follows:

Parties presenting claims on account of coupon or registered bonds of the United States which have been destroyed, wholly or in part, or on account of registered bonds which have been lost, will be required to present evidence showing—

1st. The number, denomination, date of authorizing act, and series of each bond; whether coupon or registered; and, if registered, the name of the payee. In the case of registered bonds, it should also be stated whether they had been assigned or not previous to their alleged loss or destruction, and, if assigned, by whom, and whether assigned in blank or to some person specifically by name; and if assigned in the latter manner, the name of the assignee should be given. The claimant should also state whether he has assigned or in any manner disposed of his interest in the bonds since their loss or destruction, or whether they have been assigned or otherwise disposed of with his knowledge, consent, permission, or authority.

2d. The time and place of purchase, of whom purchased, and the consideration paid.

3d. The material facts and circumstances connected with the loss or destruction of the bonds.

4th. The evidence must show the residence of the claimant, and his reputation for truth and veracity.

In all cases, the evidence should be as full and clear as possible, that there may be no doubt of the good faith of the claimant. Proofs may be made by affidavits duly authenticated, and by such other competent evidence as may be in the possession of the claimant.

Affidavits and other evidence pertaining to the claim should be trans-

mitted to the Secretary of the Treasury. Upon receipt of such documentary evidence it will be referred to the First Comptroller of the Treasury for his decision as to its sufficiency. The applicant will be advised of the decision as soon as it is reached; if it be favorable to such applicant, a blank indemnity-bond will be forwarded to him for execution; and when this indemnity-bond shall have been duly executed, returned to the Department, and approved by the First Comptroller and the Secretary, the relief desired will be granted.

Duplicates in lieu of lost registered bonds will not be issued within six months from the time of the alleged loss.

The interest on uncalled registered bonds will be paid to the payees thereof, even though the bonds have been lost or destroyed.

These regulations do not apply in any way to coupons lost or destroyed which have been detached from the bonds to which they belonged, as no relief, in such cases, can be granted under existing laws.

Form of Careat.

HON. SECRETARY OF THE TREASURY,
Washington, D. C.

SIR: The registered bonds described below, standing in my name, were stolen from the undersigned on or about the — of — last. Please enter a *careat* against their transfer:

No. —, for \$—, act of —, 18—, loan of —; and No. —, for \$—, act of —, 18—, loan of —.

Very respectfully,

General Form of Affidavit.

Personally appeared before me, a notary public in and for the city of —, county of —, and State of —, the subscriber, —, who, being duly sworn according to law, deposes and says that — is the lawful owner of the following-described registered bonds of the United States, viz:

No. —, for \$—, act of —, 18—, loan of —; and No. —, for \$—, act of —, 18—, loan of —, registered in — name on the books of the Treasury Department, —, 18—; that no assignment or transfer of said bonds has been made by him or his attorney, or by any person with his knowledge or consent, either in blank or by a specific assignment, or in any manner whatever; but said bonds are yet his property; that the said bonds were stolen from —, the said —, at —, on the —, by some person or persons unknown to —; and that due diligence* has been exercised in endeavoring to recover the said bonds, without success.

—, —,
of —, —,

Sworn to and subscribed before me, this the — day of —, A. D. 188—.

And I certify that said — is personally well known to me to be the identical person he is represented to be in the foregoing affidavit.

[Notarial seal.]

Notary Public.

* The acts of diligence should be briefly stated.

DESTROYED COUPONS.

In reply to an inquiry whether section 3702 of the Revised Statutes, above cited,* authorizes the Secretary of the Treasury to give relief in cases where coupons previously detached from bonds have been destroyed, the Attorney-General of the United States has given the following opinion:

DEPARTMENT OF JUSTICE,
January 29, 1878.

Hon. JOHN SHERMAN,
Secretary of the Treasury.

SIR: Referring to your letter of the 1st ultimo, in which is presented for my consideration the question whether section 3702 of the Revised Statutes authorizes the Secretary of the Treasury to give relief in cases where coupons, previously detached from the bonds, have been destroyed, I have the honor to reply:

The provisions of that section do not, in my opinion, extend to coupons which have been destroyed or defaced after their separation from the bonds to which they were attached.

By the first clause of the section, in case of the total or partial destruction of an interest-bearing bond of the United States, or in case such a bond has been so defaced as to impair its value to the owner, the Secretary of the Treasury is authorized, under certain conditions, to "issue a duplicate thereof, &c." The language of this clause limits the authority thereby conferred to the mere issuing of duplicate *bonds* in the cases mentioned.

So long as the coupons remain attached to the bonds with which they were issued, they must be deemed to constitute parts thereof; and, therefore, if one or more coupons, whilst attached to a bond of the above description, become destroyed or defaced, this would be a case of partial destruction or defacement of the bond, and fall within the statute. But after the severance of the coupons from the bonds, they can no longer be regarded as forming parts thereof. They then cease to be incidents even of the bonds, and become, in fact, independent claims, possessing the essential attributes of commercial paper. (Clark *vs.* Iowa City, 20 Wall., 589.)

Accordingly, should coupons, after having been detached by the holder of the bond, be transferred to another person, in whose hands they afterwards become destroyed or defaced, the latter would clearly have no right to any relief which the Secretary is by the said clause authorized to give, since the authority of the Secretary, except in cases falling within the second or last clause of section 3702, is confined to the issuing of duplicate *bonds*, which the detached coupons thus destroyed or defaced are not. Yet the result would be the same should such detached coupons not be transferred by the holder of the bonds, but become destroyed or defaced while both they and the bonds are still owned by him; as it is by the severance of the coupons from the bonds that the former cease to be parts of the latter, not by any change of ownership which may subsequently ensue.

By the second or last clause, to which I have above adverted, when any *such destroyed or defaced bond* belongs to a class or series that has

* See page 574, "Destroyed and Defaced Bonds," &c.

been or may, before the application, be called in for redemption, in this case the Secretary is authorized, instead of issuing a duplicate thereof, to pay the bond, with such interest as would have been paid if it had been presented in accordance with the call. This clause is not more comprehensive than the other, but has precisely the same scope in respect to the subject-matter of relief; in other words, it extends solely to destroyed or defaced interest-bearing *bonds*. The mode of relief only is varied thereby in cases where such bonds are of a class or series already called in for redemption.

While the provisions of section 3702 were enacted with a view to enable persons who may sustain loss by the destruction or damage of Government securities to obtain relief without resorting to Congress for special legislation, the authority conferred upon the Secretary of the Treasury by that section to afford relief must, nevertheless, be exercised in strict conformity with those provisions. He is not at liberty to give relief, in either of the modes provided, in cases which do not fairly come within the terms of the statute.

I am, sir, very respectfully,

CHAS. DEVENS,
Attorney-General.

CALLED BONDS.

All United States called bonds, forwarded for redemption, should be addressed to the SECRETARY OF THE TREASURY, Loan Division. When registered bonds are so forwarded, they should be assigned to "the SECRETARY OF THE TREASURY, for redemption." Where it is desired that the checks in payment for such registered bonds should be drawn in favor of any parties other than the payees, the bonds must be assigned to "the SECRETARY OF THE TREASURY, for redemption in favor of ——— ———." (In this blank space should be inserted the names of the parties in whose favor it is desired that the checks for the proceeds should be drawn.)

Circular—Regulations in regard to Coupons detached from Called Bonds.

1872.
DEPARTMENT NO. 48. {
Loan Division.

TREASURY DEPARTMENT, *May 9, 1872.*

When coupons, detached from bonds that have been called in for redemption, are presented for payment, the Department will pay such portion of the interest specified in such coupons as had accrued at the day fixed in the call for the redemption of the bonds, and no more, unless the party presenting them claims payment of their nominal value, in which case the Department will retain the coupons until the bonds from which they were detached shall have been presented, and the conflicting claims adjusted.

When a called bond is presented for redemption, from which a coupon, maturing after the day fixed in the call for such redemption, shall have

been detached, the nominal value of such coupon shall be deducted from the sum due upon the bond, unless the coupon shall have been paid as above; the sum thus deducted to be retained to await the presentation of the coupon and a settlement.

All correspondence in relation to bonds that have been called in for redemption, or coupons belonging thereto, should be addressed to the "Loan Division," Secretary's Office.

GEO. S. BOUTWELL,
Secretary of the Treasury.

EXEMPTION OF UNITED STATES BONDS FROM TAXATION.

Section 3701 of the Revised Statutes provides as follows: "All stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority." This section makes the exemption from taxation binding only upon "State or municipal or local authority;" but according to the express terms of the act of Congress of July 14, 1870, the bonds and the interest thereon of the funded loans which are thereby authorized—namely, the loan of 1881, the loan of 1891, and the four-per-cent. consols of 1907—"shall be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority; and the said bonds shall have set forth and expressed upon their face the above-specified condition."

CHAPTER XIV.

THE AVAILABILITY OF APPROPRIATIONS FOR THE PAYMENT OF CLAIMS AGAINST THE GOVERNMENT.

[The following communications contain so full and intelligent a discussion of the use of appropriations for the payment of claims which have accrued against the Government, and the subject is so important to the accounting officers of the Treasury, that it is deemed proper to give them a place in this appendix:]

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, D. C., December 14, 1877.

SIR: I have the honor to submit herewith an estimate of appropriations for the payment of claims originating prior to July 1, 1875, under sections 3687 and 3689 of the Revised Statutes.

H. Ex. Doc. 81—38

Soon after assuming the duties of the Secretary of the Treasury my attention was called to the payment of old claims from that class of appropriations denominated in the Revised Statutes "permanent annual appropriations." After a careful investigation of the subject I came to the conclusion that such claims were not a proper charge upon the appropriations alluded to, and accordingly gave instructions to that effect by circular dated April 20, 1877. * . * Since that time no claims have been paid from these appropriations—not otherwise excepted by law—which accrued against the Treasury prior to July 1, 1874, and none since the commencement of the present fiscal year which accrued prior to July 1, 1875.

The seventh section of the act of July 12, 1870 (Stats. at Large, vol. 16, page 251; Rev. Stats., sec. 3679), provides that no Department of the Government shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract for the future payment of money in excess of such appropriations. Prior to that time acts of Congress had been passed which expressly or constructively imposed upon the Executive Department of the Government duties involving the expenditure of money for which no appropriations had been made, and from the existence of those duties it was inferred that the power to incur the necessary debts also existed.

To cut off all such inferences and assumptions was the evident purpose of the section of law referred to. (See 14 Opinions Attorneys-General, page 109.) Section 6 of the same act (section 3691, Revised Statutes) provided for covering into the Treasury of unexpended balances of appropriations, and was intended to effect what the prior law on the subject (act August 31, 1852, 10 Stats., p. 98) had failed to accomplish. Four years of practice under the act of 1870 satisfied Congress that even that failed to correct the evil intended to be remedied, as the smallest settlement made under an appropriation extended such appropriation in force for two years longer.

The act of June 20, 1874 (18 Stats., 110), was then passed, the fifth section of which provides "that from and after the 1st day of July, 1874, and of each year thereafter, the Secretary of the Treasury shall cause all unexpended balances of appropriations which shall have remained upon the books of the Treasury for two fiscal years to be carried to the surplus fund and covered into the Treasury: *Provided*, That this provision shall not apply to permanent specific appropriations, appropriations for rivers and harbors, light-houses, fortifications, public buildings, or to the pay of the Navy and Marine Corps, but the appro-

priations named in this proviso shall continue available until otherwise ordered by Congress.”

It thus appears that this question rests solely upon the construction to be given to this act, the whole intent of which was to reform a vicious practice of retaining appropriations on the books of the Treasury long after all proper demands had been satisfied, and thus render them liable to be used for the payment of claims not contemplated by the original act.

Whether permanent annual appropriations, as designated in the Revised Statutes, are within the intent and meaning of the act of June 20, 1874, must be determined by construing the act in the light of the evil to be remedied and with reference to legislation on the subject of appropriations.

The first question which arises is, whether such appropriations are within the designation of “permanent specific” which are exempted from the operations of said act.

Permanent appropriations are defined by the Attorney-General as those for an unlimited period, and indefinite appropriations as those in which no amount is named. (13 Op., 292.)

It appears that the term “permanent specific” occurs for the first time in the Statutes in connection with the subject of appropriations in this act. The terms “permanent” and “indefinite” occur in the act of 1870, exempting such appropriations from the limitation imposed on annual appropriations.

Under the act of May 1, 1820 (Rev. Stats., sec. 3670), requiring the Secretary of the Treasury to annex to the annual estimates a statement of the appropriations for the service of the year which may have been made by former acts, it has been customary to submit such estimates under the title of *permanent*, and to classify them under the heads of *specific* and of *indefinite*. Those appropriations which the law authorizes to be made yearly in a definite amount, as “collecting revenue from customs,” and “arming and equipping the militia,” are submitted under the title of *permanent specific*, and those where no amount is mentioned as “permanent indefinite.” If this be the origin of the term *permanent specific* and is to furnish the proper rule of construction, such appropriations should be exempted from the limitation of the “surplus-fund act.” But it is not understood that the term “permanent specific” embraces all permanent annual appropriations. It is not an unreasonable rule for the Department to refuse to give a forced construction to words in order to open the doors of the Treasury for the payment of money, the control of which the Constitution has committed to Congress.

It would certainly be doing violence to the ordinary rules of interpretation to include all permanent annual appropriations under the designation of permanent specific.

The words "permanent specific appropriations" should be confined to appropriations for private claims, where nothing is left to executive officers for examination or inquiry except to identify the party, or to comply with some specific duty prescribed by the specific appropriation.

A "specific appropriation" is one where the amount, the object, or the person is designated particularly or in detail. It is usually permanent in terms, because not limited as to time like an annual appropriation; but there is an obvious distinction between a permanent specific and a permanent annual appropriation. The language of these appropriations is, "out of any money in the Treasury not otherwise appropriated." They do not differ in any respect from an ordinary appropriation except that an unlimited credit is allowed and the appropriation warrant is issued at the close of the year for all payments made under such appropriation during the year, instead of at the beginning of the year. A permanent annual appropriation contemplates that a liability will accrue in the future from time to time, and that when it occurs it may be paid from the Treasury subject to the same general laws, as to time, place, and manner, that apply to other annual appropriations. The mere fact that an appropriation is, in form, a permanent one, instead of an annual appropriation, should not operate to take it out of the general rules applicable to appropriations. Such an appropriation, from the nature of it, may not in form be covered into the Treasury, but a claim ought not to be paid out of it at a different time, nor be passed upon in a different mode, than if it were payable out of a current annual appropriation. It may be, and frequently occurs in practice, that an appropriation has no balance to its credit on the day when the limitation expires; but whenever a repayment is made to an appropriation, the balance is not permitted to be used for any purpose, but is covered into the Treasury at the close of that fiscal year. Whenever the limitation fixed by the surplus-fund act arrives, such limitation applies to any amount of the appropriation unexpended, whether such amount is the whole or a portion of the sum appropriated, and whether such sum be in the Treasury or in the hands of its disbursing officer. This rule was carried still further by Attorney-General Black, who held (9 Op., 451) "that an amount appropriated but not formally carried on the books was within the meaning of this act, as the substantial command of a law cannot be evaded by such means, nor its spirit defeated by such neglect." The present Attorney-General has

advised this Department that, although funds have been paid from the Treasury into the hands of disbursing officers, if they have not been paid out or have not been expressly set aside for the payment of debts which have been ascertained and determined, when the time arrives at which the unexpended balances of appropriations lapse into the Treasury, it will be the duty of the disbursing officers to repay such funds, that they may be carried to the surplus fund and covered into the Treasury. (Manuscript opinion, August 10, 1877.) * * *

In the consideration of laws relating to appropriations and the operation of the surplus-fund act of 1874, I have been led to the conclusion that these "permanent annual appropriations," under sections 3687 and 3689, are all within the limitation of the surplus-fund act, the practical effect of which is to make an appropriation available for proper expenditures for the fiscal year for which it is appropriated, and two fiscal years thereafter; and therefore to exclude the payment of any claim, account, or demand whatsoever, which accrued within a fiscal year the appropriations for which have been covered into the Treasury.

The general claims which arose prior to the 1st day of July, 1874, and which, under the rule before stated, cannot be paid from existing appropriations, are discussed at length in a report and accompanying documents made to me by Assistant Secretary French, under date of the 30th ultimo. * * * Among the cases thus considered are those for repayment of excess of customs duties. Prominent among these are the so-called Charges and Commissions Cases. These cases arose between the years 1854 and 1864, at which latter date the law under which such exactions were made was repealed, so that the latest of these claims are now about thirteen years old. More than two millions of dollars have been paid in this class of cases, and it is probable that an equal amount, for which claims have been filed, remains unpaid. * * * This case [of Messrs. Phelps, Dodge & Co.] is the one which first directed my attention to this class of claims, and upon which the decision was made that they are not properly chargeable to existing appropriations.

The examination which has been made of this class of cases by the special agents and other officers of this Department has been as diligent and thorough as possible, but it has failed to satisfy me either of their justice or their legality.

I understand that a very large number of these claims have passed out of the hands of the original holders, in many instances, for a consideration entirely out of proportion to the whole amount involved, and that in some instances they have been transferred through two or three

hands. The records do not show when and in what court the suits were commenced, nor whether the statute of limitations was interposed. After diligent efforts it has been found impossible to get a full record and docket of the cases pending. In some cases it appears that judgments have been opened and the amounts increased.

An ex-collector of the port of New York stated to me sometime since that during his term of office he ascertained beyond any doubt that parties who were acting as attorneys in this class of cases, paid large sums of moneys to clerks in the custom-house for services rendered in getting up the evidence on which such claims were based; and that upon learning that fact he at once dismissed the implicated employés. He also stated to me that in examining some of the vouchers in this class of cases while he was collector, he found that the entries to which the protests were attached were wrinkled and mutilated, while the protests themselves were clean and had the appearance of being nearly new, from which he inferred that the protests were attached to the entries through collusion with some of the officers of the custom-house long after the entries were made. It has also been ascertained that in some of the cases in which payments have been made, no protest of any description can now be found attached to the entry, although the papers filed in the Treasury Department, on which such payments were made, have attached to them what purport to be copies of protests made in due form.

* * * * *

The facts before stated, and those disclosed by the papers sent, even in case an appropriation is made, would make it extremely difficult for this Department to act upon these claims. It is, therefore, respectfully recommended, in case provision is made by Congress for the payment of such claims, that the evidence upon which such payment shall be authorized, together with the rate of interest to be computed, should be fixed by the act making the appropriation; and that such appropriation, if made, be available only for this class of cases. Interest in these cases has heretofore been computed at the rate of 7 per cent. per annum, and in some cases interest has been compounded. Indeed, the greater portion of these claims latterly presented has been for interest and costs.

I also deem it proper to state that in judgments recovered against collectors of customs for overpaid duties, it was customary, prior to my accession to office, to pay the interest and costs included in such judgments, under the authority of section 989 of the Revised Statutes, out of the appropriation for collecting the revenues from customs for the year in which such judgment was rendered.

It was my opinion that such interest and costs could not be considered a proper charge upon that appropriation, inasmuch as such interest and costs are not incident to the collection of the money by the Government, which was collected long prior to the rendition of the judgment and covered into the Treasury. It was, therefore, held that there was no existing appropriation out of which such interest and costs could be paid.

It is recommended that an appropriation be made for the payment of interest and costs in other judgment cases recovered against collectors of customs for overpaid duties, and which are recognized as a proper charge upon the Treasury, by a suitable appropriation, and that such appropriation be made available, not only to cases where the moneys were paid and covered into the Treasury more than two years prior to the commencement of the present fiscal year, but to future cases of like character.

Very respectfully,

JOHN SHERMAN,
Secretary of the Treasury.

Hon. SAMUEL J. RANDALL,
Speaker of the House of Representatives.

—
TREASURY DEPARTMENT,
Washington, April 20, 1877.

The attention of the Secretary of the Treasury has been drawn to the question of the use of appropriations after the expiration of the time for which they are made, by the requisition of the Secretary of War, No. 2834, of March 21, 1877, for \$1,742, in favor of Malachi V. Plank and others, based upon a report of the Third Auditor, allowed and certified by the Second Comptroller. The Secretary of the Treasury is not called upon to consider the validity of this claim, but must know that an appropriation exists applicable to its payment before issuing a warrant therefor; and if of the opinion that there is no such appropriation, he must decline to issue a warrant for payment of the claim. "If he grant a warrant not in pursuance of an appropriation by law, he violates his duty, and is responsible for it." (5 Op. Att'ys-Gen., 641.)

This is in execution of the powers conferred upon the Secretary by section 248 of the Revised Statutes, to grant warrants "in pursuance of appropriations by law," and does not conflict with the provisions of section 191, which relate to "balances" of accounts, and not to warrants nor appropriations.

As many other cases depend upon the construction of the law applicable to this case the Secretary has given it the most careful consideration, with a view to settle the rules that will govern him in the issuing of warrants in similar cases.

The claim is for a violation of a contract made in September, 1872, between Captain Foster, A. Q. M., and four carpenters, for work to be done by them until the 1st day of June, 1873, at Fort Buford, Dak. Owing to the want of funds, these men were discharged, and were paid to January 17, 1873. If their contract was a valid one, their claim accrued June 1, 1873, and they had then a clear remedy in the Court of Claims. In July, 1875, Mr. Brodhead, Second Comptroller, decided that he had not sufficient authority to allow the claim. In April, 1876, upon re-examination, Mr. Carpenter, Second Comptroller, decided that the contract was not authorized by law, and upon this decision Secretary Bristow refused to reopen the claim. No law is referred to, and I know of none, that authorizes a second reopening of the claim by any accounting officer. If this may be done, there is no end to the hearing of such claims.

Section 191 provides that the *balances* stated by the Auditor and certified by the Comptroller shall be conclusive upon the executive branches of the Government. These "balances" can only be increased or diminished by Congress. Invested with such authority and sanction, these decisions ought to be binding also on the claimant, and especially upon the officers who make them and their successors in office.

The Secretary can see in this case no reason for a revision of the findings already made.

It is also objected to the issuing of a warrant in this case that the balance of the appropriation out of which it is made payable has been covered into the Treasury.

Section 5 of the act approved June 20, 1874 (18 Stats., 110), provides that all unexpended balances of appropriations (with certain exceptions) which shall have remained on the books of the Treasury for two fiscal years, shall be carried to the surplus fund and covered into the Treasury. This section was adopted, after the fullest consideration by Congress, expressly to cut off the payment of accrued claims, by covering into the Treasury, after two years, the balance of the appropriation from which they might have been paid. The plain purpose of this act was to confine the officers of the Government to the allowance and payment of liabilities within three fiscal years. During that period the appropriation was available, and not afterward.

Section 2 of the act approved June 16, 1874 (18 Stats., 75), provides

“that all balances of appropriations, for whatever account, made for the service of the departments of the Quartermaster-General and of the Commissary-General of Subsistence, prior to July 1, 1872, which, on the 30th day of June 1874, shall remain on the books of the Treasury, shall be carried to the surplus fund,” with certain exceptions. This act was modified at the same session so as to require certain claims which accrued before the time stated to be certified to the Secretary of the Treasury.

Congress has sought, by several other acts passed since the close of the war, to limit and control the action of officers in passing accounts. By section 3678, Revised Statutes, all sums appropriated must be applied solely to the objects for which they are respectively made, *and for no other*. By another section, no money can be expended in one fiscal year in excess of the amount appropriated for that fiscal year; and contracts for the future payment of money in excess of appropriations are forbidden.

In the several laws referred to, it was clearly the intention of Congress to establish a public policy that would confine accounting officers to the adjustment or payment of claims accruing for services rendered, or duties performed, or property purchased, or contracts accruing during a limited period, and to the adjustment of the accounts of disbursing officers, the general design being to cut off the allowance and payment of long-accrued or past-due claims. This policy is so wise that every executive officer ought to contribute to maintain it.

The Treasury Department is admirably organized to pass upon accruing demands upon the Government and upon the accounts of disbursing officers. All its machinery and checks are adapted to this duty, and no serious complaint has been made, or is likely to be made, of the proper discharge of this duty. But when claims long past due are presented upon *ex-parte* evidence to officers who have no means of calling witnesses, no powers to cross-examine them, no modes of testing the sufficiency of testimony or its credibility, none of the safeguards of an open court of justice, the passage of fraudulent claims is unavoidable. Congress has by law provided a Court of Claims, where, within a limited period, all demands founded upon contracts may be presented and openly tried and decided. If this remedy in any case should be insufficient, claimants can appeal to Congress, which may grant either a new trial in the courts or a re-examination in the Departments, or directly furnish such relief as it deems right and proper. The Treasury Department is not a Court of Claims, and the reason for withholding the ordinary powers of such a court became apparent to Congress by actual errors that had occurred.

Several classes of appropriations have been excepted from the operation of the law of June 20, 1874, already referred to, growing out of their peculiar nature, and founded upon manifest reasons, as follow:

First. Permanent specific appropriations.

Second. Appropriations for rivers and harbors, and various public buildings and improvements, which, from their nature, must be continuous, extending through several years.

Third. The pay of the Navy and Marine Corps, as, from the nature of the service, it must often be performed in distant seas, during cruises for three years.

Fourth. Claims arising under certain sections of the treaty with Great Britain, of May 8, 1871.

Fifth. Contracts existing June 20, 1874.

The only exceptions that it is material now to notice are the first and fifth.

The first exception is "that this provision shall not apply to permanent specific appropriations."

A specific appropriation is one where the amount, the object, or the person is designated particularly or in detail. It may be, and usually is, permanent in terms, because not limited as to time, like an annual appropriation; but there is a wide distinction between a permanent specific appropriation and a permanent annual appropriation.

A permanent annual appropriation contemplates that a liability will accrue in the future, from time to time, and that when it accrues it may be paid from the Treasury, subject to the same general laws as to time, place, and manner that apply to other annual appropriations. Any other construction would permit the most dangerous abuses by allowing the payment from a permanent appropriation of a claim that in any court would be barred by the lapse of time.

The mere fact that an appropriation is, in form, a permanent appropriation, instead of the usual annual appropriation, should not give it greater force or take it out of the general rules as to appropriations. Such an appropriation, from the nature of it, may not in form be covered into the Treasury, but a claim ought not to be paid out of it at a different time nor be passed upon in a different mode than if it were payable out of a current annual appropriation. A claim for captured cotton, or for a mule, or horse or steamboat lost in the public service, should have no preference over a claim for salary not presented in time. It is no hardship to refer such claims to the Court of Claims.

To expand an exception in favor of a specific appropriation, so as to cover all permanent appropriations, would be to defeat the plain intent

of the law. These permanent annual appropriations are contained in sections 3687, 3688, and 3689, Revised Statutes. They include, among others, the appropriation for the expenses of the collection of the revenue from customs, which is an appropriation in a permanent form of a fixed sum for the service of each fiscal year. They include the appropriation for the interest on the public debt, which is also, in form, a permanent appropriation annually, out of the customs revenue, of a sum fixed by the public securities.* They include, also, a multitude of permanent indefinite appropriations declared to be permanent annual appropriations. An amount necessary for each year in the future, for certain purposes, is authorized to be taken from the Treasury, and these annual appropriations are subject to the same rules, limitations, and qualifications as the usual annual appropriations made by Congress. Any other construction of the act would defeat its object. Money would be taken from the permanent annual appropriation for horses and steamboats lost in the public service, and applied to pay for horses lost twenty years ago; money would be taken from the appropriation for collecting the customs, and used for the payment of claims that accrued twenty years ago, and for the interest thereon. Thus old claims would be paid out of permanent annual appropriations, and would be barred neither by lapse of time nor by adverse decisions, while current appropriations would be covered into the Treasury.

The Secretary is of the opinion that this is not a fair construction of the law; but that the words "permanent specific appropriation" should be confined to appropriations such as private bills, where nothing is left to executive officers for examination or inquiry except to identify the party, or to comply with some specific duty pointed out by the specific appropriation.

The fifth exception is "that this section shall not operate to prevent the fulfillment of contracts existing at the date of the passage of this act."

Was this contract existing on the 20th of June, 1874? This question was decided by Mr. Tayler, First Comptroller, July 15, 1874, adversely to the claim of the petitioners, and this decision was published by the Department, in a circular letter of instructions, for the information and guidance of all concerned. Mr. Tayler says:

"It is evident Congress used the word 'contract' in a limited sense; certainly not in a very broad one. I am of the opinion that Congress meant valid written contracts existing, and in the course of execution and unfulfilled June 20, 1874. It is clear that Congress did not mean

* See Police case, *ante*, 71-74; Ashton's case, *ante*, 167; Rev. Stats., 269, 305, 311, 3691, 3698.

all unpaid liabilities sounding in contract, for that would include everything and be inconsistent with limits which Congress evidently intended to impose."

This is clearly the correct construction of the law. If the phrase "existing contract" means a contract violated and ended long before, it would authorize the payment of the French spoliation claims, or claims growing out of contracts during the Mexican war, or the war of the rebellion. The act was passed expressly to protect the Treasury from old claims presented after the appropriation had terminated, and to correct alleged abuses by officers in paying accrued claims upon *ex parte* showing. The exception must not be so construed as to defeat the manifest purpose of the act. The contracts excepted are continuous and subsisting contracts requiring acts to be performed, and not contracts broken and ended, or matured into accrued liabilities. The statute cuts off the payment of the clearest claims two years after the expiration of the appropriation, such as the salary of the President, or a supreme judge, or a member of Congress; and much more, the multitude of doubtful claims that grow by time. All proper claims are likely to be promptly made and paid. Some just claims may arise and be delayed by neglect or want of proof, but, to provide for these, and at the same time to give the claimant the benefit of the finding by the Auditor and Comptroller, the Secretary of the Treasury is directed, "at the beginning of each session, to report to Congress, with his annual estimates, any balances of appropriations for specific objects affected by this section that may need to be reappropriated." This is the precise reference required to secure the payment of the judgments by the Supreme Court or Court of Claims.

It follows, therefore, that the Secretary is not authorized to draw any money from the Treasury in payment of this claim, or in payment of any claims covered by either permanent or ordinary annual appropriations that do not clearly fall within the limitation fixed by the act of June 20, 1874, or within the exceptions named; and the officers charged with the preparation and issue of warrants will be required to observe this rule.

JOHN SHERMAN,

Secretary.

DEPARTMENT OF JUSTICE,

Washington, August 10, 1877.

SIR: In answer to your letter of the 6th instant, inquiring in relation to "funds in the hands of disbursing officers belonging to appropriations which lapsed into the Treasury on June 30, 1877, under the sur-

plus-fund act of June 20, 1874," (18 Stats., 110, sec. 5), I have the honor to say :

Although funds have been paid from the Treasury into the hands of disbursing officers, if they have not been paid out, or have not been expressly set aside for the payment of debts which have been ascertained and determined, when the time arrives at which the unexpended balances of appropriations lapse into the Treasury, it will be the duty of the disbursing officers to repay such funds that they may be carried to the surplus fund and thereafter covered into the Treasury.

The mischief intended to be remedied by the surplus-fund act of June 20, 1874, was that of permitting appropriations to continue available for the payment of the debts or claims for which they provided for a long period after such appropriations were made, and was intended to fix a definite period within which the appropriations should be used, or the unexpended balances carried to the surplus fund.

If the disbursing officers were permitted to retain the funds which are in their hands, after the arrival of such period, the object of the law would be to a certain extent defeated, as the funds would continue available for a longer period than was intended.

It would not be competent, therefore, for the disbursing officers to continue to issue certificates payable from the balances in their hands, after the date when they lapse into the Treasury. If, however, previous to that time they shall have issued certificates by which claims upon these appropriations have been definitely determined and decided, and the parties in whose favor the certificates are issued are entitled to their money, although the payment has not actually been made before the date referred to, such claims may thereafter properly be paid by the disbursing officers. The issuance of these certificates is a definite ascertainment of the claims which are expressed by them, and the mischief intended to be remedied by Congress—namely, that of permitting appropriations to remain available after a definite period—would not exist in the case supposed, because before such period arrived there would have been a distinct setting aside of such portions of the appropriations.

For what period the disbursing officers should be allowed to retain in their hands funds for the purpose of meeting the certificates issued by them previous to June 30, 1877, is a matter of administration only. While they continue to hold the same, of course the amount to be carried to the surplus fund cannot be accurately ascertained and covered into the Treasury.

To permit them to hold such funds for an indefinite period would therefore be impossible. It is for the Secretary to prescribe such a rule

in regard to the amount to be retained by the disbursing officers as shall seem proper in view of the information which he may receive as to the amount in full of such certificates, and, further, to prescribe how long they may retain such sums, and within what time they must be paid into the Treasury.

Very respectfully, your obedient servant,

CHAS. DEVENS,

Attorney-General.

Hon. JOHN SHERMAN,

Secretary of the Treasury.

CHAPTER XV.

DISBURSING OFFICERS AND AGENTS, AND OTHER BONDED OFFICERS OF THE UNITED STATES.

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All officers and agents of the Government whose duties in respect of moneys and public property of the United States are of a fiduciary character, are, with some exceptions in the military service, required

by law, or by Departmental regulations (*United States vs. Tingey*, 5 Pet., 115; *United States vs. Bradley*, 10 Pet., 359; 6 Op. Att'ys-Gen., 24; *Ex parte Randolph*, 2 Brock. C. C., 447), to give bond to the United States, with good and sufficient sureties, for the faithful performance of their duties.

Section 3639 of the Revised Statutes declares that "The President is authorized, if in his opinion the interest of the United States requires the same, to regulate and increase the sums for which bonds are, or may be, required by law, of all district attorneys, collectors of customs, naval officers, and surveyors of customs, navy agents, receivers and registers of public lands, paymasters in the Army, commissary-general, and by all other officers employed in the disbursement of the public moneys, under the direction of the War or Navy Departments." See, also, section 2075.

Sections 5488, 5489, 5490, 5491, and 5492 of the Revised Statutes apply to disbursing officers.

The Secretary of the Treasury prescribes from time to time the forms of keeping and rendering all public accounts. (Rev. Stats., 248.) He is required to cause all accounts of the expenditure of public money to be settled within each fiscal year, except where the distance of the places where such expenditure occurs may be such as to make further time necessary; and in respect to expenditures at such places, he establishes, with the assent of the President, fixed periods at which settlements must be made. (Rev. Stats., 250.) The First Comptroller is required to make an annual report to Congress of such officers as have failed to make settlements of their accounts for the preceding fiscal year, in accordance with these provisions. (Rev. Stats., 272; see the annual report of the First Comptroller for 1881, pages 8 and 9.)

Section 3622 of the Revised Statutes provides that—

"Every officer or agent of the United States who receives public money which he is not authorized to retain as salary, pay, or emolument, shall render his accounts *monthly*. Such accounts, with the vouchers necessary to the correct and prompt settlement thereof, shall be sent by mail, or otherwise, to the Bureau to which they pertain, within ten days after the expiration of each successive month, and, after examination there, shall be passed to the proper accounting officer of the Treasury for settlement. Disbursing officers of the Navy shall, however, render their accounts and vouchers direct to the proper accounting officer of the Treasury. In case of the non-receipt at the Treasury, or proper Bureau, of any accounts within a reasonable and proper time thereafter, the officer whose accounts are in default shall be required to furnish satisfactory evidence of having complied with the provisions of this section. *The Secretary of the Treasury may*, if in his opinion the circumstances of the case justify and require it, *extend the time* hereinbefore prescribed for the rendition of accounts. Noth-

ing herein contained shall, however, be construed to restrain the heads of any of the Departments from requiring such other returns or reports from the officer or agent, subject to the control of such heads of Departments, as the public interest may require."

Every such officer or agent who fails to comply with the provisions of this section is to be "deemed guilty of embezzlement," and becomes liable to a fine "in a sum equal to the amount of the money embezzled," and to imprisonment for a term of "not less than six months or more than ten years." (Rev. Stats., 5491; see, also, section 3633.)

The act of January 31, 1823, "concerning the disbursement of public money" (3 Stats., 723), provided in section 2 that accounts of moneys advanced from the Treasury should be rendered *quarter-yearly* by the officers or agents receiving such moneys. The act of July 17, 1862, "for the more prompt settlement of the accounts of disbursing officers" (12 Stats., 593), provided that such accounts should thereafter be rendered *monthly* instead of quarterly, but authorized the Secretary of the Treasury to extend the time therein prescribed for the rendition of accounts, when, in his opinion, the circumstances of the case should justify and require it. Pursuant to the requirement of the latter act, the Secretary of the Treasury addressed, on December 30, 1868, to Thos. J. Hobbs and Bushrod Birch, disbursing clerks of the Treasury Department, and to C. Hazlett, disbursing clerk in the Sixth Auditor's office, the following letter:

"SIR:

"In conformity with the act approved July 17, 1862, entitled 'An act to provide for the more prompt settlement of the accounts of disbursing officers,' you are hereby directed to render monthly, from and after the first proximo, all accounts under your charge by virtue of your appointment as disbursing clerk under act of March 3, 1853, to the proper accounting officers of the Treasury within a period not exceeding fifteen days from the expiration of each month.

"Very respectfully,

"H. McCULLOCH,

"*Secretary of the Treasury.*"

In the exercise of the discretionary power vested in the Secretary of the Treasury by the foregoing act, the following letter was addressed to Thomas J. Hobbs, disbursing clerk of the Treasury Department:

"TREASURY DEPARTMENT,

"*Office of the Secretary,*

"*Washington, D. C., October 19, 1871.*

"SIR:

"It having been demonstrated that monthly settlements of your salary accounts are impracticable, so much of Department's letter of December 30, 1868, as required *such* accounts to be *rendered* monthly

is hereby revoked. Hereafter, until otherwise directed, you will render your salary accounts quarterly instead of monthly.

“Very respectfully,

“GEO. S. BOUTWELL,

“*Secretary.*”

Similar letters were addressed, November 1, 1871, to Bushrod Birch, disbursing clerk of the Treasury Department, and C. Hazlett, disbursing clerk in the Sixth Auditor's office. (See page 646, *post*, par. X.

In the following sketch of the disbursing and other bonded officers of the United States, they are, as far as practicable, arranged under the several Executive Departments and independent branches of the Government to which they respectively belong, commencing with the Treasury Department, whose list of such officers is the longest and most important, and whose jurisdiction extends in a measure over the disbursing officers of all the other departments and branches of the Government.

DEPARTMENT OF THE TREASURY.

Treasurer of the United States.

The Treasurer of the United States, the assistant treasurers, and the designated depositaries of the United States, are disbursing officers. National banks designated as such depositaries are disbursing agents of the United States.

The Treasurer is the principal disbursing officer of the Government. His office was established at the time of the organization of the Treasury Department. (Secs. 1 and 4, act of Sept. 2, 1789; Rev. Stats., 301.)

The Treasurer, before entering upon the duties of his office, must give bond, with sufficient sureties, to be approved by the Secretary of the Treasury and by the First Comptroller, in the sum of \$150,000, and to be lodged in the office of the First Comptroller. The bond is conditioned “for the faithful performance of the duties of his office, and for the fidelity of the persons by him employed.” (Rev. Stats., 302.)

He is authorized to receive and keep the moneys of the United States, and to disburse the same upon warrants drawn by the Secretary of the Treasury, countersigned by the *First* Comptroller, and recorded by the Register, and not otherwise. (Rev. Stats., 305; Bender's case, *ante*, 330.) He must render his accounts to the First Comptroller quarterly, or oftener if required, and transmit a copy thereof, when settled, to the Secretary of the Treasury; and at all times submit to the Secretary

of the Treasury and the First Comptroller, or either of them, the inspection of the moneys in his hands. (Rev. Stats., 305.)

The Treasurer, each Assistant Treasurer, and each designated depository of the United States, and the cashier of each of the national banks designated as such depositories, are required, at the close of business, on every thirtieth day of June, to report to the Secretary of the Treasury the condition of certain accounts named in section 309 of the Revised Statutes. (Rev. Stats., 310.)

The Treasurer is required on the third day of every session of Congress to lay before the Senate and House of Representatives fair and accurate copies of all accounts by him from time to time rendered to and settled with the First Comptroller, as also a true and perfect account of the state of the Treasury. (Rev. Stats., 311.)

All moneys received by the treasurer of the District of Columbia were, by section 13 of the act of July 12, 1876, required to be deposited in the Treasury of the United States; and said moneys thus deposited were drawn from the Treasury upon warrants of the accounting officers of the District and issued under the direction of the Commissioners of the District or their successors in office. (19 Stats., 87.)

By the terms of the acts of June 4, 1880, section 2 (21 Stats., 162), and March 3, 1881, section 2 (*Id.*, 466), all the revenues of the District of Columbia, from taxes or otherwise, are to be deposited in the United States Treasury, and to be drawn therefrom, only on the requisition of the Commissioners of the District upon the Secretary of the Treasury; and the Commissioners are to render to the accounting officers of the Treasury monthly accounts of the disbursements of the moneys so drawn.

Section 7, act June 11, 1878 (20 Stats., 107), abolished the offices of sinking-fund commissioners of the District of Columbia, and provided that all duties and powers possessed by said commissioners be transferred to and exercised by the Treasurer of the United States, and that he shall perform the same in accordance with existing laws. Bond filed with First Comptroller. For the form of the bond of the United States Treasurer, see Appendix of Forms, &c., *post*, No. 1. His salary is fixed at \$6,500. (18 Stats., 397.)

The office of Assistant Treasurer of the United States, in the Department of the Treasury, was created by the act of March 3, 1863. (12 Stats., 761; Rev. Stats., 303.) His salary is fixed at \$3,800. (18 Stats., 397.) He can discharge any or all of the duties of the Treasurer when authorized by the Treasurer, but the consent of the Secretary of the Treasury must be had to such authorization. (Rev. Stats., 304.) As

he does not give bond, the Treasurer is liable for his official acts. This officer is not included in the previous or subsequent references to the Assistant Treasurers.

Assistant Treasurers.

The offices of Assistant Treasurer at New York, Boston, Charleston, and St. Louis were established under the provisions of sections 3, 4, and 5 of the act of August 6, 1846. (9 Stats., 59; Rev. Stats., 3595.) The office at Charleston was abolished by act of August 15, 1876. (19 Stats., 155.)

By the same act of August 6, 1846, the treasurers of the Mint of the United States at Philadelphia, and branch mint at New Orleans, were respectively made Assistant Treasurers. (Rev. Stats., 3595.) By section 7 of the act of July 3, 1852, the treasurer of the branch mint in California was authorized to perform the duties of an Assistant Treasurer. (10 Stats., 12; Rev. Stats., 3595.) The office of Assistant Treasurer at Baltimore was established by the act of June 15, 1870 (16 Stats., 152), and the offices of Assistant Treasurer at Cincinnati and Chicago were established by the act of March 3, 1873. (17 Stats., 543; Rev. Stats., 3595.)

Under the provisions of section 65 of the act of February 12, 1873 (17 Stats., 435), the Assistant Treasurers at Philadelphia, New Orleans, and San Francisco, were relieved of their duties as officers of the mint.

Assistant Treasurers perform the duties required of them relating to the receipt, safe-keeping, transfer, and disbursement of the public moneys. (Rev. Stats., 3599.)

The Assistant Treasurers respectively give bond, approved by the Solicitor of the Treasury, in such penal sum as may be fixed by the Secretary of the Treasury; and they renew, strengthen, or increase their official bonds from time to time as the Secretary of the Treasury may direct. (Rev. Stats., 3600.)

Bonds of Assistant Treasurers are filed in the office of the First Comptroller. For form of bond, see Treasurer's bond, Appendix of Forms, &c., *post*, No. 1.

Comptroller of the Currency.

The office of Comptroller of the Currency was created by the act of June 3, 1864. (13 Stats., 99; Rev. Stats., 324.)

The Comptroller of the Currency is appointed by the President, on the recommendation of the Secretary of the Treasury, by and with the advice and consent of the Senate, and holds his office for the term of

five years, unless sooner removed by the President, upon reasons to be communicated by him to the Senate. (Rev. Stats., 325.)

His salary is fixed at \$5,000 a year. (Rev. Stats., 325.) He is required to give bond to the United States in the penal sum of \$100,000, with not less than two responsible sureties, to be approved by the Secretary of the Treasury, conditioned for the faithful discharge of the duties of his office. (Rev. Stats., 326.) His bond is filed in the office of the First Comptroller of the Treasury. For form, see Appendix, *post*, No. 111.

Deputy Comptroller of the Currency.

The Deputy Comptroller of the Currency is appointed by the Secretary of the Treasury, and the law provides that he "shall possess the power and perform the duties attached by law to the office of Comptroller during a vacancy in the office or during the absence or inability of the Comptroller." (Rev. Stats., 327.) His salary, as fixed under existing law, is \$3,000 per annum. (18 Stats., 398.) He is required to give bond, in like manner as the Comptroller of the Currency, in the penal sum of \$50,000. His bond is filed in the office of the First Comptroller of the Treasury. For form, see Appendix No. 112.

Receivers of National Banks.

The Comptroller of the Currency, on becoming satisfied (as specified in sections 5226 and 5227, Revised Statutes) that any National Banking Association has failed to redeem in the lawful money of the United States any of its circulating-notes as required by law, and is in default, may forthwith appoint a receiver, and require of him such bond and security as he deems proper. (Rev. Stats., 5234.) By this section the receiver is required to pay over all money made, in winding up the affairs of the association, to the Treasurer of the United States, subject to the order of the Comptroller of the Currency, to whom he is also to make report of all his acts and proceedings. He gives bond to the Comptroller of the Currency, in whose office the bond is filed. For form of bond, see Appendix, *post*, No. 113.

Mint Officers.

The officers of each mint are: a superintendent, an assayer, a melter and refiner, and a coiner; and, for the mint at Philadelphia, an engraver; all to be appointed by the President, by and with the advice and consent of the Senate. (Rev. Stats., 3496.) Their salaries are fixed by section 3498 of the Revised Statutes. These officers (with the excep-

tion of the engraver) are required to give bonds, to be approved by the Secretary of the Treasury, in the sum of not less than \$10,000, nor more than \$50,000, and the Secretary may, at his discretion, increase the bonds of the superintendents. (Rev. Stats., 3501.) Each officer and clerk appointed at the assay offices named in section 3558 of the Revised Statutes takes, before entering upon the duties of his office, an oath pursuant to the provisions of section 1756 of the Revised Statutes, and gives a bond to the United States, satisfactory to the Director of the Mint or to one of the judges of the Supreme Court of the State or Territory in which the office is located, for the faithful performance of the duties of the office. (Rev. Stats., 3501, 3555, 3561, 3562.)

The Secretary of the Treasury is authorized to constitute any superintendent of a mint or assayer of an assay office, an assistant treasurer of the United States without additional compensation, to receive gold coin and bullion on deposit for the purposes provided for in section 254 of the Revised Statutes. (Act June 8, 1878; 20 Stats., 102.)

The superintendents of mints, the superintendent of the assay office at New York, the assayers in charge of the mint at Denver, Colorado, and the assay offices at Charlotte, North Carolina; Boise City, Idaho; and Helena, Montana, are disbursing officers.

Bonds of superintendents are from \$25,000 to \$100,000; bonds of assayers are from \$10,000 to \$50,000; bonds of melters and refiners are \$10,000; bonds of coiners are \$10,000. For form of bonds, see Appendix, *post*, No. 27.

The chief clerks and cashiers at mints and assay offices are appointed under the general provisions of law and regulations governing said offices, and give bond to the United States, approved by the Secretary of the Treasury, in such form and for such amount as he may designate.

These bonds are filed in the office of the First Comptroller. For form, see Appendix, *post*, No. 28.

Collectors of the Customs, Naval Officers, and Surveyors of the Customs
Are appointed for the term of four years. (Rev. Stats., 2613.)

The oath of office must be taken and transmitted to the Commissioner of Customs within three months, and the person failing shall be liable to a penalty of \$200. (Rev. Stats., 2618.) Collectors are disbursing officers; as are, also, naval officers and surveyors when acting as collectors.

Every collector, naval officer, and surveyor, before entering on the duties of his office, gives a bond to the United States, with one or more sufficient sureties, in the penalty and form prescribed by section 2619 of the Revised Statutes. The bonds of these officers are approved

by the Commissioner of Customs, and filed in his office. (Rev. Stats., 2625.)

In case of the disability or death of a collector the duties imposed and authority vested in him devolve on his deputy, for whose conduct the estate of the collector is made liable. If there be no deputy, the naval officer of the district acts as such; if there be no naval officer, the surveyor of the port acts; and if there be no such surveyor, then the surveyor at the nearest port within the district performs the duties. (Rev. Stats., 2625.)

In case of the sickness or unavoidable absence from his office of any collector or surveyor of customs, he may, with the approval of the Secretary of the Treasury, authorize some officer or clerk under him to act in his place, and to discharge all the duties required by law of such collector, or surveyor, in his capacity as disbursing agent; and the bond of the principal covers the acts of the person appointed in such case. (Rev. Stats., 2631.)

There is a permanent appropriation for expenses of collecting the revenue from customs. (Rev. Stats., 3687.)

Bonds of collectors of customs vary in amount from \$5,000 to \$200,000; bonds of naval officers, from \$5,000 to \$20,000; bonds of surveyors, from \$1,000 to \$150,000. For form of bond (same form for all) and of affidavit for sureties, see Appendix, *post*, Nos. 21 and 22.

Collectors of Internal Revenue

Are appointed by the President, by and with the advice and consent of the Senate. (Rev. Stats., 3142.)

Every collector, before entering upon the duties of his office, executes a bond for such penal sum as may be prescribed by the Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, with not less than five sureties, to be approved by the Solicitor of the Treasury. (20 Stats., 327.) The act of March 1, 1879, prescribes the duties of collectors as disbursing agents, and their bonds as such. The same act (20 Stats., 329) prescribes a rule for the fixing of their salaries according to their annual collections (Wilson's case, 2 Lawrence, Compt. Dec., 207, notes). Their bonds are filed with the First Comptroller. For forms of bonds, see Appendix, *post*, Nos. 23 and 24.

Inspectors of Tobacco and Cigars

Are appointed by the Secretary of the Treasury in every collection district where they may be necessary, and are entitled to receive such fees as the Commissioner of Internal Revenue may prescribe, to be paid

by the owner or manufacturer of the articles inspected. (Rev. Stats., 3151; Yates' case, 2 Lawrence, Compt. Dec., 211.) They must give bond in a sum not less than \$5,000, with security approved by the Secretary of the Treasury, or collector of the district. For form of bond, see Appendix, *post*, No. 25.

Internal-Revenue Storekeepers

Are appointed by the Secretary of the Treasury. They receive such compensation as may be determined by the Commissioner of Internal Revenue. The act of August 15, 1876 (19 Stats., 152), limits their compensation to \$4 per day. The Commissioner prescribes the amount of their bonds, and they are approved by him. (Rev. Stats., 3153.)

One or more storekeepers are assigned by the Commissioner of Internal Revenue to every bonded or distillery warehouse established pursuant to law. (Rev. Stats., 3154.) For form of bond, see Appendix, *post*, No. 25.

Internal-Revenue Gaugers

Are appointed by the Secretary of the Treasury in every collection district where they may be necessary—one or more. They give bond in a penal sum of not less than \$5,000, to be approved by the Commissioner of Internal Revenue, and strengthened or renewed, as he may require. They perform their duties under the supervision and direction of the collector of the district to which they may be respectively assigned. (Rev. Stats., 3156.) They are entitled to receive such fees (act June 19, 1878, 20 Stats., 187, fixes the compensation, not to exceed \$5 per day while actually employed), to be determined by the quantity gauged, as may be prescribed by the Commissioner of Internal Revenue. (Rev. Stats., 3157.) For form of bond, see Appendix, *post*, No. 25.

Internal-Revenue Storekeepers and Gaugers.

The Secretary of the Treasury may, upon the recommendation of the Commissioner of Internal Revenue, impose the duties of storekeeper and gauger upon one officer, where the amount of spirits produced at the distillery to which said officer may be assigned is not sufficient in the judgment of the Commissioner to warrant the employment of two officers to perform the separate duties of storekeeper and gauger. In such cases his compensation is that for storekeeper only. He gives bond in not less than \$5,000, to be approved by the Commissioner of Internal Revenue. For form of bond, see Appendix, *post*, No. 25.

Internal-Revenue Stamp Agents.

In any collection district where, in the judgment of the Commissioner of Internal Revenue, the facilities for the procurement and distribution of stamped paper and adhesive stamps, as provided by law, are insufficient, the Commissioner is authorized to supply to collectors, assistant treasurers of the United States, designated depositaries, and postmasters, without payment therefor, suitable quantities of stamped paper and adhesive stamps. The Commissioner may, in advance, require of such officers a bond, with sufficient sureties, equal in amount to the value of said stamped paper or stamps. (Rev. Stats., 3427.) The highest rates of commission may be allowed (not exceeding five per cent. on aggregate amount of stamps) which are allowed to any other parties purchasing such stamped paper or stamps. (Rev. Stats., 3425.) For form of bond, see Appendix, *post*, No. 26.

Supervising and Local Inspectors of Steamboats.

The Supervising Inspector-General is appointed by the President, by and with the advice and consent of the Senate. His salary is \$3,500 per annum, with reasonable travelling expenses. (Rev. Stats., 4402.) His duties are prescribed in section 4403 of the Revised Statutes.

There are ten supervising inspectors, who are similarly appointed, at a salary of \$3,000 per annum, and actual, reasonable travelling expenses. (Rev. Stats., 4404.) Their general duties are prescribed in section 4406 of the Revised Statutes, and they are under the general direction of the Secretary of the Treasury.

One inspector of hulls and one inspector of boilers are appointed at stated salaries, and in certain collection districts, given in detail in section 4414 of the Revised Statutes. Their qualification and appointment are governed by the provision of section 4415 of the Revised Statutes.

Every supervising and local inspector of steamboats executes a proper bond, to be approved by the Secretary of the Treasury, in such form and upon such conditions as the Secretary may prescribe, for the faithful performance of the duties of his office and the payment in the manner provided by law of all moneys that may be received by him. (Rev. Stats., 4459.)

The salaries and expenses of the Supervising Inspector-General and all other officers and employés in this branch of the public service are paid, under the direction of the Secretary of the Treasury, out of the revenues received into the Treasury from the inspection of steam-vessels, and the licensing of the officers of such vessels; which revenues,

or so much of them as may be necessary for these purposes, are permanently appropriated therefor. (Rev. Stats., 4461.) This permanent annual appropriation is made in section 3689 of the Revised Statutes. One of the disbursing clerks of the Treasury Department makes all the disbursements for this branch of the public service.

The bonds given by supervising and local inspectors are for \$10,000 each, and are filed with the First Comptroller. (Rev. Stats., 4459, 4462.) For forms of bonds, see Appendix, *post*, Nos. 29 and 30.

Disbursing Agents of Appropriations for the Construction of Public Buildings.

The Secretary of the Treasury may designate any officer of the United States, who has given bond for the faithful performance of his duties, to be disbursing agent for the payment of all moneys appropriated for the construction of public buildings authorized by law within the district of such officer. (Rev. Stats., 255; Huidekoper's case, 2 Lawrence, Compt. Dec., 351.)

Superintendents of construction, superintendents of granite-cutting, and superintendents of repairs of public buildings under the control of the Department of the Treasury are appointed by the Secretary of the Treasury, through the Supervising Architect, under the provisions of law authorizing the construction of public buildings at certain places, and the repair and preservation of public buildings. Each of these officers gives such bond as may be prescribed and approved by the Secretary of the Treasury. The salaries are fixed by the Secretary of the Treasury, and their bonds, which are in the usual form for disbursing agents, are filed in the Treasury Department.

The following-named public buildings are under the control of the Secretary of the Treasury: The Treasury building in the District of Columbia; the sub-treasury building at New York; the mints, branch mints, assay offices, custom-houses, appraisers' stores, court-houses, post-offices, and marine-hospitals, in the several States. Life-saving stations are under the control of the Secretary of the Treasury, and the public buildings erected thereon are under the supervision of two captains of the revenue service, who are designated by the Secretary. (Rev. Stats., 4249.) Light-houses are under the control of the Light-House Board, of which the Secretary of the Treasury is president *ex officio*. Such officers as may be necessary to superintend the construction and renovation of light-houses are detailed therefor from the Engineer Corps of the Army, by direction of the President. (Rev. Stats., 4664.)

The collectors of customs in the several collection districts are re-

quired to act as disbursing agents for the payment of all moneys that are, or may hereafter be, appropriated for the construction of custom-houses, court-houses, post-offices, and marine-hospitals, with such compensation, not exceeding one-quarter of one per centum, as the Secretary of the Treasury may deem equitable and just. (Rev. Stats., 3657.)

Where there is no collector at the place of location of any public work specified in the preceding section, the Secretary of the Treasury may appoint a disbursing agent for the payment of all moneys appropriated for the construction of any such public work, with such compensation as he may deem equitable and just. (Rev. Stats., 3658.) In such cases the usual bond given by disbursing agents is required, and it is filed in the Treasury Department.

Disbursing Agent for the United States Coast Survey.

The disbursing agent for the Coast Survey is appointed by the Secretary of the Treasury, as provided in the regulations of the Coast Survey, adopted according to the plan of reorganizing the mode of executing the survey, provided for in the act of March 3, 1843 (5 Stats., 640), which were approved by the President, April 29, 1843. His salary is fixed at \$2,500, and he is required to give bond for \$30,000, with such security as may be satisfactory to the Treasury Department. (Rev. Stats., 4683.) For form of bond, see Appendix, *post*, No. 101.

Disbursing Agent of Fund for Suppression of Counterfeiting.

The disbursing agent of the appropriations made for "suppressing counterfeiting and other crimes," under the control of the Secretary of the Treasury, is appointed by said Secretary. He makes payments from that appropriation under the special direction and approval of the Solicitor of the Treasury, and under general authority of law. (Rev. Stats., 3614.) The Assistant Solicitor of the Treasury is now said disbursing agent, and gives bond for \$10,000. His bond is filed in the office of the First Comptroller, and is approved by the Secretary of the Treasury. For form of bond, see Appendix, *post*, No. 104.

DEPARTMENT OF STATE.

Consular Officers.

The general organization of the consular service took place under the provisions of the act of August 18, 1856, and it was reorganized under the acts of June 11, 1874, March 3, 1875, and February 18, 1876. (Rev. Stats., 1690.) The word consul, as defined by the act of February 1,

1876 (19 Stats., 2), means “any person invested by the United States with, and exercising, the functions of consul-general, vice-consul general, consul, or vice-consul.”

Agents and consuls-general, consuls-general, consuls, and commercial agents are *ex-officio* disbursing officers. Before receiving their commissions or entering upon their official duties, they must give bond to the United States, with such sureties, who shall be permanent citizens of the United States, as the Secretary of State shall approve, in a penal sum of not less than \$1,000, and in no case less than the annual compensation allowed to the officer, and not more than \$10,000, and in such form as the President may prescribe. These bonds are, by law, required to be deposited with the Secretary of the Treasury (Rev. Stats., 1697); but in point of fact they are filed with the First Comptroller. For forms of bonds, see Appendix, *post*, Nos. 14 and 15.

Vice-consuls general, vice-consuls, and vice-commercial agents, before entering upon their duties, give bond, with such sureties as may be approved by the Secretary of State, in a sum of not less than \$2,000 nor more than \$10,000. The bonds are required to be lodged with the Secretary of the Treasury; but in point of fact they are filed in the office of the First Comptroller. (Rev. Stats., 1697, 1698.) When acting in the principal offices these officers are also *ex-officio* disbursing officers. For form of bond, see Appendix, *post*, No. 16.

The provisions of law which apply to the collection and return of official fees are contained in the Revised Statutes, sections 1724, 1725, 1726, 1727, 1728, and 1729. See also section 3617.

Every consular officer is required to render true and just quarterly accounts, and returns of moneys received for the use of the United States, and to pay over any balance due to the United States. (Rev. Stats., 1734.)

The salaries of consular officers, under existing law, are set forth in the appropriation act of February 24, 1881. (21 Stats., 340 *et seq.*) The maximum compensation at non-salaried offices is limited to \$2,500 per annum. (Rev. Stats., 1732.)

Consular officers are entitled to an additional compensation of \$1,000 per annum from fees collected at their agencies, provided there be surplus fees after paying the agents \$1,000 per annum. (Rev. Stats., 1733.)

When the official fees collected at a consulate or commercial agency are not sufficient to pay the salary attached to the office, the officer is authorized to draw on the Secretary of the Treasury for the balance due, and to charge any expenses attending the sale of his draft in his account of salaries and fees. When this draft, properly indorsed, is

presented for payment at the Treasury Department, the First Comptroller issues his requisition on the Secretary of the Treasury (with the draft attached), requesting payment. The Secretary issues his warrant directing payment by the United States Treasurer to the proper indorsee. In accordance with this warrant the Treasurer issues and delivers his draft for the amount. The warrant, with the draft, is the Treasurer's voucher in the settlement of his accounts, and the Comptroller's requisition is a voucher in the Secretary's office for the issuing of the warrant.

For forms of consul's draft, Comptroller's requisition, and Secretary's warrants, see Appendix, *post*, Nos. 17, 18, 19, and 20. No. 20 shows the form of warrant charging the officers' salary with the official fees applied to its payment and crediting miscellaneous receipts with the amount.

The practice of allowing consular officers whose salaries are fixed by law (Rev. Stats., 1690—Schedules B and C) to retain, in certain cases, fees not exceeding \$1,000 per annum, rests upon the construction given to the first proviso of section 1 of the act of March 3, 1868 (15 Stats., 57, now section 1733 of the Revised Statutes). The question whether this practice is in conflict with the provisions of sections 1765 and 3617 may be worthy of consideration; and the same may be said of the practice of allowing such officers to appropriate, in the payment of their salaries, consular fees collected. (Rev. Stats., 3617.)

United States Bankers at London.

Morton, Rose & Co., the disbursing agents for the State and Treasury Departments, under the above title, were appointed by the President of the United States, October 4, 1873, and perform their duties under the direction of the said Departments. They are authorized to pay the salaries and contingent expenses of such diplomatic and consular officers as may be instructed to draw on them, and to make such other disbursements for the United States as shall be required of them. Every United States officer who draws on them is given a letter of credit, specifying the amount for which he is entitled to draw. They are also instructed to receive from consular officers such surplus of official fees as they may have, or other moneys directed to be deposited with said bankers. In order to provide funds for the payments to be made by said bankers, the United States, at such times as necessary, makes remittances to them, designating the special nature of the payments to be made from such funds. They are required to render their accounts of receipts and disbursements quarterly, to the Treasury Department, in the name of the several appropriations on account of

which moneys have been received or payments made, and to furnish notarial copies of all drafts paid by them. They receive no compensation nor commission for said services, and are not required to give a bond. (6 Op. Att'ys-Gen., 24.) In addition to the moneys transmitted to them by the Treasury Department, they are authorized to apply the official fees received by them to the payment of such officers, and on such accounts, as the United States may from time to time direct.

The practice of appointing such financial agents abroad has continued from the administration of General Washington down to the present time. Advances are made to them under the direction of the President, pursuant to the provisions of section 3648 of the Revised Statutes.

In 1794, Edmund Randolph, Secretary of State, by direction of the President, appointed John and Francis Baring, of London, to make disbursements for the United States. In 1803, Sir Francis Baring & Co. performed the duties of disbursing agents; and in 1805, Alexander Baring disbursed for the United States. Subsequently the name of the firm was changed to Baring Brothers & Co., and they acted as agents under former instructions. N. M. Rothschild & Sons became the accredited agents of the United States, and continued to act as such until March 14, 1843, when they were succeeded by Baring Brothers & Co., as United States bankers at London. August 28, 1871, the President appointed Clews, Habicht & Co. as United States bankers at London, to succeed Baring Brothers & Co. Clews, Habicht & Co. performed the requisite services until September, 1873, when they became insolvent. October 4, 1873, Morton, Rose & Co. were appointed, and have continued to the present time to act as disbursing agents of our Government.

Disbursing Agents at International Exhibitions.

For the several International Exhibitions held in foreign countries, at which the United States has been represented, the moneys appropriated have been disbursed by an officer either named by enactment or by regulation of the commission appointed by the United States. In all such cases said disbursing officer gives bond in such form and for such amount as may be determined by the Secretary of State. It is usual in such cases for the secretary of the commission to act as the disbursing agent.

Disbursing Agents of International Commissions.

The secretaries of the United States and Spanish Commission and the United States and French Commission, sitting in Washington, are

the accredited disbursing agents, and give bonds as such. Their bonds are approved by the Secretary of State, and filed with the First Comptroller. The forms of bond and requisition for advances are the same as those for general disbursing agents.

DEPARTMENT OF WAR.

Army Engineers superintending the Construction of Public Works.

It is the duty of the officers of the Corps of Engineers of the Army superintending the construction of a fortification, or engaged about the execution of any other public work, to disburse the moneys applicable to the same; but no compensation is allowed them for such disbursements. These officers are not required, in any case, to give bond for the faithful disbursement of public money. (6 Op. Att'ys-Gen., 24; Rev. Stats., 1153.)

Quartermasters.

The Quartermaster's Department of the Army consists of a Quartermaster-General, Assistant Quartermasters-General, Deputy Quartermasters-General, quartermasters, assistant quartermasters, and military storekeepers; all these appointments being made from the Army. During the absence of the Quartermaster-General, the President is authorized to empower some officer of the Quartermaster's Department to perform his duties. (Rev. Stats., 1132.) The general duties of these officers are defined in sections 1133, 1135, 1136, 1137, 1138, and 1139 of the Revised Statutes. Assistant quartermasters perform duty as assistant commissaries of subsistence, when so ordered by the Secretary of War. (Rev. Stats., 1134.) All officers of the Quartermaster's, Subsistence, and Pay Departments, the Chief Medical Purveyor, and assistant medical purveyors, and all storekeepers give, before entering upon their duties, bonds to the United States, in such sums as the Secretary of War may direct, faithfully to account for all public moneys and property they may receive. The President may at any time increase the sums prescribed. (Rev. Stats., 1191.)

Assistant Quartermasters-General, with rank of colonel, give bond for \$50,000; Deputy Quartermasters-General, with rank of lieutenant-colonel, \$40,000; quartermasters, with rank of major, \$40,000; assistant quartermasters, with rank of captain, \$20,000; military storekeepers, with rank of captain, \$10,000.

The bonds of these officers are filed in the office of the Second Comptroller of the Treasury. For form of bonds, see Appendix, *post*, No. 31.

For forms of officer's estimate of funds required, of the request of the Quartermaster-General based thereon, and of the requisitions of the Secretary of War on the Secretary of the Treasury, see Appendix, *post*, Nos. 32, 33, 34, 35, 36, and 37.

Commissaries of Subsistence.

The Subsistence Department of the Army consists of a Commissary-General of Subsistence, Assistant Commissaries-General of Subsistence, and commissaries of subsistence. (Rev. Stats., 1140.) It is the duty of these officers to purchase and issue to the Army, under the direction of the Secretary of War, such supplies as enter into the composition of the Army ration. (Rev. Stats., 1141.) Their further duties are stated in sections 1143, 1144, 1145, and 1150 of the Revised Statutes.

Commissaries of subsistence with the rank of major, give bond for \$16,000; commissaries of subsistence with the rank of captain, give bond for \$12,000. The bonds of these officers are filed in the office of the Second Comptroller of the Treasury. For form of bond, see Appendix, *post*, No. 38. For forms of officer's estimate of funds required, and of the request of the Commissary-General of Subsistence based thereon, see Appendix, *post*, Nos. 39 and 40. For forms of the requisitions of the Secretary of War on the Secretary of the Treasury, see Appendix, *post*, Nos. 34, 35, 36, and 37.

Ordnance Storekeepers.

In the Ordnance Department, provision is made for the appointment of ordnance storekeepers, under section 1159 of the Revised Statutes. They give bond as follows: the storekeeper who has the rank of major, \$50,000; those with the rank of captain, \$15,000 to \$20,000. Any number, not exceeding six, of the ordnance storekeepers may be authorized to act as paymasters at armories and arsenals. (Rev. Stats., 1161.) The bonds of these officers are filed in the office of the Second Comptroller of the Treasury. For form of bond, see Appendix, *post*, No. 41.

For forms of requests of Chief of Ordnance on the Secretary of War for advances, and of notifications to officers to whose credit they are placed, or to whom balances found due are remitted, see Appendix, *post*, Nos. 42, 43, 44, and 45. For forms of the requisitions of the Secretary of War on the Secretary of the Treasury, see Appendix, *post*, Nos. 34, 35, 36, and 37.

Medical Purveyors.

In the Medical Department of the Army there are a chief medical purveyor and four assistant medical purveyors. (Rev. Stats., 1168.)

The chief medical purveyor, and the assistant medical purveyors, may be assigned by the President to duty as surgeons, when not acting as purveyors. (Rev. Stats., 1171.)

The chief medical purveyor has, under the direction of the Surgeon-General, supervision of the purchase and distribution of the hospital and medical supplies. (Rev. Stats., 1173.)

The chief medical purveyor gives bond for \$30,000; assistant medical purveyors give bond for \$20,000. The bonds of these officers are filed in the office of the Second Comptroller of the Treasury. For form of bonds, see Appendix, *post*, Nos. 46 and 47. For forms of medical purveyor's weekly report of public funds on deposit and in hand, and of the request of the Surgeon-General on the Secretary of War for advances, see Appendix, *post*, Nos. 48 and 49. For forms of requisitions of the Secretary of War on the Secretary of the Treasury, see Appendix, *post*, Nos. 34, 35, 36, and 37.

Paymasters.

The Pay Department of the Army consists of a Paymaster-General, Assistant Paymasters-General, Deputy Paymasters-General, and paymasters. (Rev. Stats., 1182.)

The Paymaster-General performs the duties of his office under the direction of the President. (Rev. Stats., 1186.)

The Deputy Paymasters-General, in addition to paying troops, superintend the payment of armies in the field. (Rev. Stats., 1187.)

The paymasters pay the regular troops, and all other troops in the service of the United States, when required to do so by order of the President. (Rev. Stats., 1188.)

All disbursing officers of the Pay Department renew their bonds, or furnish additional security, at least once in four years, and as much oftener as the President may direct. (Rev. Stats., 1192.)

Assistant Paymasters-General give bond for \$30,000; Deputy Paymasters-General give bond for \$25,000; paymasters give bond for \$20,000. The bonds of these officers are filed in the office of the Second Comptroller of the Treasury. For form of bonds, see Appendix, *post*, No. 50. For form of paymaster's estimate of funds required, and forms of request of the Paymaster-General on the Secretary of War, see Appendix, *post*, Nos. 51, 52, 53, and 54. For forms of requisitions of the Secretary of War on the Secretary of the Treasury, see Appendix, *post*, Nos. 34, 35, 36, and 37.

Disbursing Agent for the Signal Office.

In the composition of the Army it is provided that there shall be a Chief Signal Officer. (Rev. Stats., 1094.) His rank and duties are defined in section 1195 of the Revised Statutes.

The Secretary of War provides, in the system of observations and reports in charge of the Chief Signal Officer of the Army, for such stations, reports, and signals as may be found necessary for the benefit of agriculture and commercial interests. (Rev. Stats., 222.)

An officer of the Army is detailed, by direction of the Secretary of War, to act as disbursing agent for the Signal Office. He gives bond for \$20,000, which is filed in the office of the Second Comptroller of the Treasury, and is similar in form to the usual bond required of disbursing agents.

For form of request of the Chief Signal Officer on the Secretary of War for advances, see Appendix, *post*, No. 55. For forms of requisitions of the Secretary of War on the Secretary of the Treasury, see Appendix, *post*, Nos. 34, 35, 36, and 37.

All of the above-named officers of the Army who give bonds are disbursing officers.

There is a long-standing practice of advancing to the line officers of the Army, *acting* as assistant quartermasters and assistant commissaries of subsistence, public money for disbursement. There is no statutory authority for this practice, and a question may arise whether it is in conflict with section 3648 of the Revised Statutes. This section makes it unlawful to advance public money from the Treasury, *except*, under the special direction of the President, to the disbursing officers (or specially appointed disbursing agents: section 3614) for “the faithful and prompt discharge of *their respective duties*.” The duty of disbursing moneys appropriated for the quartermaster and commissary departments of the Army is, by law, devolved upon the officers appointed in these departments, and they give bond for “the faithful and prompt discharge of their respective duties,” namely, “faithfully to account for all public moneys and property which they may receive.” (Rev. Stats., 1191.) It has been held in Birch’s case (*ante*, 155), on the principle of construction that “where an act of Parliament gives authority to one person [or a class of persons] expressly, all others are excluded,” that “when a statute creates an office with specified duties, or adds a special duty to those already charged on an officer, the reasonable presumption is, that this is the only provision in-

tended to be made on the subject;" that as the law had provided for two disbursing clerks in the Treasury Department, they alone, while in office, can discharge the duties of disbursing clerks; and, hence, that there is no authority to designate any other officer or person to perform their duties. The principle upon which this case was decided seems to render it doubtful whether the employment of line officers in the quartermaster and commissary departments of the Army is legal. The statutes have created these staff departments as distinct branches of the service, with special and distinctive duties of trust and responsibility, and the number of officers employed therein is defined and limited. (Rev. Stats., 1132, 1140.) Congress considered it necessary to confer expressly upon the Secretary of War the power to authorize officers of the quartermaster department to act in the commissary department. (Rev. Stats., 1134.) This legislation would have been unnecessary if the Secretary could, under his power to make regulations for the service, have authorized a disbursing officer of one department of the Army to perform the duties of disbursing officer in another department of the Army. In the absence of statutory authority there does not appear to be any such power in the executive branch of the Government, and, *à fortiori*, none for the designation or detail of line officers to perform duties in these departments. The line officers so detailed give no bond as disbursing agents, and, if they did, it is very doubtful whether the sureties could be held liable in case of default. Besides this, there could be no embezzlement of moneys advanced for disbursement to a line officer acting in these departments, if, as would seem to be the case, such advance be not authorized or be prohibited by law. The practice, though of long standing, seems to be obnoxious to the objections, (1) that it is contrary to law; (2) that there is no bonded security, nor can there be, for the faithful disbursement of moneys advanced; and (3) that there is no criminal liability on the part of the officer in case of misappropriation of the moneys advanced to him.

There is certainly no more authority to employ a line officer in these departments of the Army than in the pay department; indeed, not as much, for, under the provisions of sections 3648 and 3614, advances of pay and emoluments may be made to persons in the military or naval service who are employed on distant stations. This express legislation, however, is but another instance of the limitations on the authority to advance public money from the Treasury; and it is, by implication, strong in support of the position herein taken against the practice referred to. Where it becomes necessary to disburse public money, *and*

there is no officer or agent of the Government charged by law with the duty of making such disbursement, there is authority in the head of the executive department for which the appropriation has been made to designate some officer of his department, or to employ a special agent, to make such disbursement. (Senate-Disbursement case, 2 Lawrence, Compt. Dec., 401.) Section 3614 of the Revised Statutes recognizes the existence of, but does not confer, this authority. It requires bond in such case unless the agent appointed be an officer “of the Army or Navy.” This exception seems to imply that any officer of the Army or Navy might be so employed, and without bond being required of him. This implication, however, does not support the practice referred to; since the officers of the quartermaster and commissary departments of the Army are, by law, charged with the duties of disbursing officers in these departments. The only case in which a line officer of the Army can be authorized to perform a duty imposed by law upon an Army disbursing officer seems to be that already referred to, namely, when such line officer is employed at a distant station. He may then, under the direction of the President, act as if in the pay department of the Army, by receiving advances of public money, wherewith to discharge the pay and emoluments to which he may be entitled. The principles and provisions of law discussed in the Artificial-Limbs case (2 Lawrence, Compt. Dec., 379) and in the Senate-Disbursement case (*Id.*, 401), show the illegality of the practice in question.

DEPARTMENT OF THE NAVY.

Officers of the Pay Corps.

The active list of the Pay Corps of the Navy consists of pay directors, pay inspectors, paymasters, passed assistant paymasters, and assistant paymasters. (Rev. Stats., 1376.)

All appointments in the Navy Pay Corps are made by the President, by and with the advice and consent of the Senate. (Rev. Stats., 1378, 1379, 1380, and 1381.) Temporary acting appointments may be made in the cases provided for in sections 1381 and 1564.

The President may designate among the paymasters in the service, and appoint to every fleet or squadron, a paymaster, who shall be denominated “paymaster of the fleet.” (Rev. Stats., 1382.) Every paymaster, passed assistant paymaster, and assistant paymaster, before entering on the duties of his office, gives bond, to be approved by the Secretary of the Navy, for the faithful performance of his duties. (Rev. Stats., 1383.)

Pay directors give bond for \$25,000; pay inspectors give bond for \$25,000; paymasters give bond for \$25,000; passed assistant paymasters give bond for \$15,000; assistant paymasters give bond for \$10,000. (Rev. Stats., 1383.)

Officers of the Pay Corps give new bonds, with sufficient sureties, whenever required to do so by the Secretary of the Navy. (Rev. Stats., 1384.)

The issuing of a new appointment and commission to any officer of the Pay Corps does not affect or annul any existing bond, but the same remains in force, and applies to such new appointment or commission. (Rev. Stats., 1385.) The bonds of the officers of the Pay Corps of the Navy are filed in the office of the Second Comptroller of the Treasury.

For form of bond of pay director, pay inspector, and paymaster, see Appendix, *post*, No. 56. For form of bond of passed assistant paymaster and assistant paymaster, see Appendix, *post*, No. 57. For form of pay-officer's money request on the Secretary of the Navy, see Appendix, *post*, No. 58. For forms of requisitions of the Secretary of the Navy on the Secretary of the Treasury, see Appendix, *post*, Nos. 59 and 60.

It is unlawful for any paymaster, passed assistant paymaster, or assistant paymaster, to advance or loan to any officer in the naval service any sum of money, public or private, or any credit, or any article or commodity whatever. (Rev. Stats., 1389.)

No commanding officer of any vessel of the Navy can be required to perform the duties of a paymaster, passed assistant paymaster, or assistant paymaster. (Rev. Stats., 1381, 1432.)

Financial Agents at London.

No person, except in the case provided for in section 1381 of the Revised Statutes, can be employed or continued abroad, to receive and pay money for the use of the naval service on foreign stations, whether under contract or otherwise, who has not been, or shall not be, appointed by and with the advice and consent of the Senate. (Rev. Stats., 1550.)

The only agents now appointed for the Navy Department, to disburse money on foreign stations, are the financial agents at London (Messrs. Seligman Brothers), who give bond in the sum of \$200,000. Their bond is filed in the office of Second Comptroller of the Treasury. For form, see Appendix, *post*, No. 61.

Naval Storekeepers.

The President, by and with the advice and consent of the Senate, may appoint a naval storekeeper at navy-yards where he may deem

such officer necessary, and also at foreign stations. The appointee gives bond, in such amount as may be fixed by the Secretary of the Navy, for the faithful performance of his duty. (Rev. Stats., 1413, 1414, 1415.)

The Secretary of the Navy is required to order a suitable commissioned or warrant officer of the Navy, except in the case provided in section 1414, Revised Statutes, to take charge of naval stores for foreign squadrons at each of the foreign stations where such stores may be deposited, and where a storekeeper may be necessary; and every officer so acting as storekeeper on a foreign station gives bond in such amount as may be fixed by the Secretary of the Navy. (Rev. Stats., 1438, 1439.) The duties of naval storekeepers are now performed by officers of the Pay Department of the Navy under their official bonds.

Paymaster and Quartermasters, Marine Corps.

In the Marine Corps there are one paymaster, one quartermaster, and two assistant quartermasters, who are, in relation to rank, on the same footing as officers of similar grades in the Army. (Rev. Stats., 1596, 1603.)

The paymaster, quartermaster, and assistant quartermasters in the Marine Corps give bonds in the same form as that prescribed for paymasters in the Navy. Appendix, *post*, No. 56.

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DEPARTMENT OF THE INTERIOR.

Commissioner of Patents and Chief Clerk of the Patent Office.

The Commissioner of Patents and the chief clerk, before entering upon their duties, severally give bond, with sureties, to the Treasurer of the United States—the former in \$10,000, and the latter in \$5,000—conditioned for the faithful discharge of their respective duties, and that they shall render to the proper officers of the Treasury a true account of all money received by virtue of their offices. (Rev. Stats., 479.) Their bonds are filed in the office of the First Comptroller of the Treasury. For form, see Appendix, *post*, No. 62.

These are not disbursing officers. All disbursements for the Patent Office are made by the disbursing clerk of the Interior Department. (Rev. Stats., 496.)

Pension-Agents.

The President is authorized to appoint, by and with the advice and consent of the Senate, all pension-agents, who hold their respective offices for the term of four years, unless sooner removed or suspended,

as provided by law, and until their successors are appointed and qualified; and they give bond for such amount, and in such form, as the Secretary of the Interior may approve. (Rev. Stats., 4778, 4779.) They are located at such places as the President may designate, subject to the restriction of section 4780 of the Revised Statutes. Their compensation is limited by the provisions of sections 4781 and 4782 of the Revised Statutes. (See *Artificial-Limbs case*, 2 Lawrence, Compt. Dec., 379.)

Pension-agents at Chicago, Columbus, Concord, Indianapolis, New York City, Philadelphia, and Washington, D. C., give bonds for \$250,000; at Des Moines, Detroit, Knoxville, Milwaukee, and St. Louis, \$200,000; at Boston and Syracuse, \$150,000; at Louisville, \$125,000; at San Francisco, \$50,000. The bonds of pension agents are filed in the office of the Second Comptroller of the Treasury. For form of bond, see Appendix, *post*, No. 63.

For form of requisitions on the Secretary of the Interior and the Secretary of the Treasury for advances of money, see Appendix, *post*, Nos. 64, 65, 66, and 67.

Surveyors-General and Deputy Surveyors of Public Lands.

Surveyors-General are appointed by the President, by and with the advice and consent of the Senate, for the term of four years from the date of commission. (Rev. Stats., 2207, 2217, 2222.) Their salaries are fixed by sections 2208, 2209, 2210, and 2211 of the Revised Statutes. Each Surveyor-General, before entering upon the duties of his office, executes and delivers to the Secretary of the Interior a bond, with good and sufficient security, in the penal sum of \$30,000. (Rev. Stats., 2215.) These bonds must be increased or renewed under the direction of the Secretary of the Interior, when so required by the President. (Rev. Stats., 2216.)

The Surveyor-General of California gives bond for \$50,000—all others for \$30,000. The bonds are filed in the office of the First Comptroller of the Treasury. For form of bond, see Appendix, *post*, No. 68.

For forms of requisitions for advances of money, see Appendix, *post*, Nos. 78 and 79.

Deputy surveyors are appointed by Surveyors-General, who administer the necessary oath of office; and Surveyors-General may remove deputies for negligence or misconduct in office. (Rev. Stats., 2223.)

Every deputy surveyor enters into bond with sufficient security, and the penalty of the bond in each case is double the estimated amount of money accruing under the contracts for surveying into which

they enter, at the rate per mile stipulated therein. (Rev. Stats., 2230.) The bonds are approved and certified by the proper Surveyor-General. (*Id.*) For form of contract and bond, see Appendix, *post*, No. 80.

Registers of Land Offices and Receivers of Public Moneys.

A Register of the Land Office and a Receiver of Public Moneys for each land district established by law are appointed by the President, by and with the advice and consent of the Senate. (Rev. Stats., 2234.) They reside at the place where the land office is located, and give bond, in the penal sum of \$10,000, for the faithful discharge of duty. (Rev. Stats., 2235, 2236.) In addition to a salary of \$500, as provided for in section 2237, Revised Statutes, they are allowed fees as prescribed in sections 2238, 2239, and 2240, Revised Statutes. They are appointed for four years, but are removable at pleasure. (Rev. Stats., 2244.)

All moneys received by the receivers for the use of the United States are to be paid into the Treasury without deductions. (Rev. Stats., 3617. See District Land-Office case, 2 Lawrence, Compt. Dec., 412.)

Registers give bond for \$10,000; receivers give bond from \$15,000 to \$55,000. The bonds of these officers are filed in the office of the First Comptroller of the Treasury. For form of bond, see Appendix, *post*, No. 68. For form of receiver's bond as disbursing agent, see Appendix, *post*, No. 69.

For forms of requisitions for advances of money to receivers, see Appendix, *post*, Nos. 70 and 71.

Indian Agents.

Indian agents are appointed by the President, by and with the advice and consent of the Senate. (Rev. Stats., 2052.) Each Indian agent (except when otherwise provided for) receives salary at the rate of \$1,500 per annum, and holds his office for the term of four years. (Rev. Stats., 2055, 2056.) He gives bond, before entering upon the duties of his office, in such penalties and with such security as the President or the Secretary of the Interior may require. (Rev. Stats., 2057.)

It is provided in section 2089 of the Revised Statutes that "At the discretion of the President, all disbursements of moneys, whether for annuities or otherwise, to fulfill treaty stipulations with individual Indians or Indian tribes, shall be made in person by the Superintendents of Indian Affairs," as therein directed. (Rev. Stats., 2090, 2091, 2092.)

The office of Superintendent of Indian Affairs, though not formally

abolished, has ceased to exist since June 30, 1878, when the last appropriation made by Congress for its support expired. (19 Stats., 271; 20 Stats., 63, 64.)

Section 10, act March 3, 1875 (18 Stats., 450), provides that the security or securities upon the bond to be given by each Indian agent, before entering upon the duties of his office, "shall file a sworn statement with the Secretary of the Interior, setting forth the nature and kind of property owned by such security or securities, the value of the same, and where situated; and that no money appropriated by this act shall be paid to any Indian agent hereafter appointed until the security or securities shall have filed such statement."

Every Indian agent must reside and keep his agency within or near the territory of the tribe for which he may be agent, and at such place as the President may designate; and those appointed for California are prohibited from visiting the city of Washington unless so ordered by the Commissioner of Indian Affairs. (Rev. Stats., 2060, 2061.)

A military officer may execute the duties of an Indian agent when required by the President, and in doing so he serves without any other compensation than his travelling expenses. (Rev. Stats., 2062.)

Indian sub-agents are appointed by the President, at a salary of \$1,000 a year, and give bond in the penal sum of \$1,000, to be approved by the Secretary of the Interior. (Rev. Stats., 2063, 2065.)

The President may increase the bonds of all persons charged or trusted with the disbursement or application of money, goods, or effects of any kind, on account of Indian Affairs. (Rev. Stats., 2075.)

The bonds of Indian agents are from \$10,000 to \$50,000, and are filed in the office of the Second Comptroller of the Treasury. For form of bond, see Appendix, *post*, No. 72.

For forms of estimates of funds for the Indian service, and of the requisitions based thereon, and for payment of balance due the Indian agent, see Appendix, *post*, Nos. 73, 74, 75, 76, and 77.

Secretaries of Territories.

The secretaries of Territories are appointed by the President, by and with the advice and consent of the Senate, for four years, and until their successors are appointed and qualified, unless sooner removed by the President. (Rev. Stats., 1843.)

All accounts for disbursements in the Territories of the United States, of money appropriated by Congress for the support of the government therein, are settled and adjusted at the Treasury Department. (Rev. Stats., 1886.)

The secretary of each Territory is the disbursing officer therefor, and as such he is required to give bond in the sum of \$20,000, under the approval of the Secretary of the Treasury, and by virtue of the general authority of law requiring bonds of disbursing officers. The salaries of these officers are fixed at \$2,500 each. (Rev. Stats., 1845.)

Their bonds are filed with the First Comptroller. For form, see Appendix, *post*, No. 102.

Disbursing Agents for the Geological Survey.

The Geological Survey was reorganized under the provisions of the act of March 3, 1879 (20 Stats., 394), which established the office of Director of the Geological Survey under the Department of the Interior. The Director is appointed by the President, by and with the advice and consent of the Senate, at a salary of \$6,000.

The Secretary of the Interior appoints one chief disbursing and property clerk in the office at Washington, who gives bond for \$30,000, and three disbursing agents, located at different points, to disburse funds for carrying on the survey. These agents give bond for \$35,000, \$20,000, and \$10,000, respectively. Other disbursing agents may be appointed as the exigencies of the survey may require. The bonds are approved by the Secretary of the Interior, and filed with the First Comptroller. For form, see Appendix, *post*, No. 103.

Disbursing Agent, Yellowstone National Park.

By act of March 1, 1872 (17 Stats., 32; Rev. Stats., 2474), a certain tract of land lying near the headwaters of the Yellowstone river was set apart as a public park. Section 2, same act (Rev. Stats., 2475), places the park under the exclusive control of the Secretary of the Interior, who prescribes regulations for its management. By act of June 20, 1878 (20 Stats., 229), and since, annual appropriations have been made for the park.

The disbursing agent is appointed by the Secretary of the Interior pursuant to section 3614 of the Revised Statutes, and the general authority conferred by these enactments, and gives a bond, approved by the Secretary of the Interior, for \$5,000. The bond is filed in the First Comptroller's office. For form, see Appendix, *post*, No. 103.

Disbursing Agents for the Tenth Census.

Disbursing agents, Tenth Census, are appointed by the Secretary of the Interior, pursuant to section 3614 of the Revised Statutes, and the act of March 3, 1879, "An act to provide for taking the tenth and subsequent censuses." (20 Stats., 473.) They give bonds for \$10,000

each, which are approved by the Secretary of the Interior, and filed in the office of the First Comptroller. For form of bond, see Appendix, *post*, Nos. 106 and 107.

POST-OFFICE DEPARTMENT.

Postmasters.

The Postmaster-General may establish post offices at all such places on post-roads established by law as he deems expedient. (Rev. Stats., 3829.)

Postmasters of the fourth and fifth class are appointed and may be removed by the Postmaster-General; all others are appointed by the President, by and with the advice and consent of the Senate, and hold their offices for four years, unless sooner removed or suspended according to law. (Rev. Stats., 3830.)

Every postmaster must reside within the delivery of the office to which he is appointed, and is subject to all penalties relating to the service, whether he has taken the oath of office or not. (Rev. Stats., 3831, 3832.)

Before entering upon his duties the postmaster gives bond in such penalty as the Postmaster-General may deem sufficient; and when his office is designated as a money-order office, his bond contains an additional condition for the performance of the duties of a money-order office. (Rev. Stats., 3834.)

Section 2, act March 3, 1877 (19 Stats., 335), provides "That from and after the passage of this act the bonds of all the postmasters may by direction of the Postmaster General be approved and accepted, and the approval and acceptance signed by the First Assistant Postmaster General in the name of the Postmaster General * * *."

The bond of a married woman who may be appointed postmaster is made binding upon her and her sureties, and she is liable for official misconduct as if she were sole. (Rev. Stats., 3834.)

Whenever any postmaster is required to execute a new bond, all payments made by him after the execution of such new bond may, if the Postmaster-General or Sixth Auditor deem it just, be applied first to discharge any balance which may be due from such postmaster under his old bond. (Rev. Stats., 3835. See Martin's case, 2 Lawrence, Compt. Dec., 331, 332.)

In case an office becomes vacant, the postmaster and his sureties are responsible under their bond for the safe-keeping of the public property of the post office, and the due performance of the duties thereof,

until the expiration of the commission, or until a successor has been duly appointed and qualified and has taken possession of the office, subject to the exceptions stated in section 3836 of the Revised Statutes.

The bonds of postmasters vary, according to the importance of the office, from \$1,000 to \$500,000. Postmasters deposit public money as prescribed in sections 3846, 3847, and 3848 of the Revised Statutes.

The salaries of postmasters are divided into five classes, exclusive of the city of New York, and are readjusted once in two years. (Rev. Stats., 3852, 3854.)

Postmasters are disbursing officers; but, in practice, no *advances* are made to them from moneys in the Treasury. They disburse the postal revenues under the direction of the Postmaster-General and Sixth Auditor.

Post-Office Inspectors.

Post-office inspectors are appointed by the Postmaster-General at a salary of not more than \$1,600 per annum, with actual and necessary expenses not to exceed \$5 per day, when they are actually engaged in travelling on the business of the Department; but a limited number of them may be allowed a fixed salary of \$2,500. When inspectors are required to collect or disburse money, they give bond in such sum and form, and with such security, as the Postmaster-General may approve. (Rev. Stats., 4017, 4018; 20 Stats., 140; 21 Stats., 177.)

When the service requires, the Assistant Postmasters-General and superintendents may be employed as special agents [post-office inspectors], and as such may be paid their travelling expenses. (Rev. Stats., 4019.)

Resident Mail Agents at Foreign Ports, &c.

The Postmaster-General may appoint resident mail agents at certain foreign ports, at which United States mail steamers touch, to land and receive mails; also route agents in charge of mail steamers between certain points. (Rev. Stats., 4021, 4022.) He may establish, in connection with the mail-steamship service to China and Japan, a general postal agency at Shanghai, or at Yokohama, with such branch agencies as he may deem necessary. (Rev. Stats., 4023.) These officers give bond subject to the approval of the Postmaster-General.

Bonds of officers of the Post-Office Department are in the custody of the Postmaster-General and Sixth Auditor.

For forms of bonds of postmasters, post-office inspectors, and special agents, proposals, mail contracts, and requisitions for public money, see Appendix, *post*, Nos. 81, 82, 83, 84, 85, 86, 87, and 88.

DEPARTMENT OF JUSTICE, AND THE JUDICIARY.

United States Marshals.

Marshals are appointed by the President, by and with the advice and consent of the Senate, for the United States judicial districts in the several States, for the term of four years.

Every marshal, before he enters upon the duties of his office, gives bond before the district judge, with two good and sufficient sureties, to be approved by said judge, in the penal sum of \$20,000, for the faithful performance of said duties by himself and his deputies. The bond is filed and recorded in the office of the clerk of the district court, or circuit court sitting within the district; and copies thereof, certified by the clerk, under the seal of said court, are competent evidence in any court of justice. (Rev. Stats., 783.)

Under the provisions of section 2 of the act of February 22, 1875 (18 Stats., 333), "whenever the business of the courts in any judicial district shall make it necessary, in the opinion of the Attorney-General, for the clerk or marshal to furnish greater security than the official bond now required by law, a bond in a sum not to exceed forty thousand dollars shall be given when required by the Attorney-General, who shall fix the amount thereof."

Marshals are disbursing officers. (Rev. Stats., 362, 368, 369, 830, 855, 1876, 1877, 3648; 18 Stats., 333; Langford's case, 2 Lawrence, Compt. Dec., 269; Subpœna case, *Id.*, 295, 296; 16 Op. Att'ys-Gen., 147.) The fees of marshals are defined in sections 829, 830, and 831, Revised Statutes. They are entitled to receive salaries, as a compensation for extra services, as prescribed in section 781 of the Revised Statutes. Where marshals incur extraordinary expenses in enforcing the laws, the payment of which is not specifically provided for, the President may allow the payment thereof. (Rev. Stats., 846; 18 Stats., 318; 10 Stats., 99; 6 Op. Att'ys-Gen., 223.)

For form of marshal's bond (now in use), see Appendix, *post*, No. 89. For form of requisition, see Appendix, *post*, Nos. 90 and 91.

The Supreme Court of the United States have power to appoint a marshal for said court. (Rev. Stats., 677.) His salary is \$3,500 per annum. (Rev. Stats., 680.)

Section 832 of the Revised Statutes provides that—

"The marshal of the Supreme Court of the United States shall be entitled to receive for the service of any warrant, attachment, summons, capias, or other writ, except execution, venire, or a summons or subpœna for a witness, one dollar for each person on whom such service may be made. His fees for all other services shall be the same as are

herein allowed to other marshals; but he shall pay into the Treasury of the United States all fees received by him, and render a true account thereof at the close of each term to the Attorney-General."

Territorial Marshals.

Marshals for the Territories are appointed by the President, by and with the advice and consent of the Senate, for the term of four years. They have the power and perform the duties of, and are subject to the same regulations and penalties as, the marshals for the several judicial districts of the United States. (Rev. Stats., 1876, 1877.)

Clerks of United States Courts.

A clerk is appointed for each district court, by the judge thereof, also for each circuit court, by the circuit judge of the circuit, except in cases otherwise provided by law. (Rev. Stats., 555, 619.)

The clerk of the Supreme Court, and every clerk and deputy clerk of a circuit or district court, must qualify as prescribed in section 794 of the Revised Statutes.

The clerk of every court gives a bond, to be approved as to amount and sureties by the court which appoints him. A copy of every such bond is entered on the journal of the court for which the clerk is appointed, and the bond is deposited for safe-keeping as the court may direct. A certified copy of the entry on the journal is *prima facie* proof of the execution of such bond and of the contents thereof. (Rev. Stats., 795.)

Sections 2 and 3 of the act approved February 22, 1875 (18 Stats., 333), appear to have modified or repealed section 795 of the Revised Statutes. They make the following provisions as to the execution of bonds of clerks of United States courts and marshals:

"SEC. 2. That whenever the business of the courts in any judicial district shall make it necessary, in the opinion of the Attorney-General, for the clerk or marshal to furnish greater security than the official bond now required by law, a bond in a sum not to exceed forty thousand dollars shall be given when required by the Attorney-General, who shall fix the amount thereof.

"SEC. 3. That the clerks of the Supreme Court and the circuit and district courts, respectively, shall each, before he enters upon the execution of his office, give bond, with sufficient sureties, to be approved by the court for which he is appointed, to the United States, in the sum of not less than five, and not more than twenty thousand dollars, to be determined and regulated by the Attorney-General of the United States, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court of which he is clerk; and it shall be the duty of the district attorneys of the United States, upon requirement by the Attorney General, to give thirty days notice of motion in their several courts that new bonds, in accordance

with the terms of this act, are required to be executed; and upon failure of any clerk to execute such new bonds, his office shall be deemed vacant. The Attorney General may at any time, upon like notice through the district attorney, require a bond of increased amount, in his discretion, from any of said clerks within the limit of the amount above specified; and the failure of the clerk to execute the same shall in like manner vacate his office. All bonds given by the clerks shall, after approval, be recorded in their respective offices, and copies thereof from the records, certified by the clerks respectively, under seal of court, shall be competent evidence in any court. The original bonds shall be filed in the Department of Justice." (See *Postmaster-General vs. Reeder*, 4 Wash. C. C., 686.)

The bond of the clerk of the Supreme Court of the United States, given under section 795 of the Revised Statutes, is for \$2,000. The bonds of clerks of the United States circuit and district courts are from \$5,000 to \$20,000. For form of bond, see Appendix, *post*, No. 92.

Clerk of the Court of Claims.

The chief clerk and the assistant clerk of the Court of Claims are appointed by the court. (Rev. Stats., 1053.)

The salary of the chief clerk is fixed at \$3,000, and that of the assistant clerk at \$2,000 per annum. (Rev. Stats., 1054.)

The chief clerk gives bond to the United States in such amount, in such form and with such security, as shall be approved by the Secretary of the Treasury. (Rev. Stats., 1055.) His bond is fixed at \$5,000.

Clerk of the Courts of the District of Columbia.

The Supreme Court of the District of Columbia appoints a clerk, who takes the oath and gives bond with sureties, in the manner prescribed by law for clerks of district courts of the United States. (Rev. Stats. Dist. Col., 915.) His fees are prescribed in the Revised Statutes of the District of Columbia, 897, 898, 922, 923, 924. His bond is for \$20,000. The account of the clerk for his salary, fees, emoluments, and expenses of office, is adjusted and settled under the direction of the court, and is not subject to revision by the accounting officers of the Treasury. (Rev. Stats. Dist. Col., 924-927.)

Marshal for the District of Columbia.

The marshal for the District of Columbia is appointed for the same term, takes the same oath, gives a bond with sureties in the same manner, and has generally within the District the same powers and performs the same duties as marshals of the United States courts. (Rev. Stats. Dist. Col., 910.) The amount of his bond is \$20,000, as prescribed in section 783 of the Revised Statutes of the United States.

Clerk of the Police Court for the District of Columbia.

The clerk of the police court for the District of Columbia is appointed by said court, to serve during the pleasure of the court, at a salary of \$2,000. He takes the oath of office prescribed by law for clerks of the district courts of the United States, and gives such bond and surety as the court approves. (Rev. Stats. Dist. Col., 1059.)

Disbursing Agent for the Jail in the District of Columbia.

Under the provisions of the act to establish the Department of Justice, approved June 22, 1870, section 11 (16 Stats., 162–164; Rev. Stats., 371), the disbursing clerk of the Department of Justice disburses the funds for the expenses of the jail in the District of Columbia, and for the subsistence of prisoners, which disbursements were formerly made by the warden of the jail for the District of Columbia.

DISBURSING CLERKS IN THE EXECUTIVE DEPARTMENTS.

The disbursing clerks authorized by law in the several Departments are appointed by the heads of the respective Departments from clerks of the fourth class. Each gives a bond to the United States for the faithful discharge of the duties of his office according to law, in such penal amount as shall be directed by the Secretary of the Treasury, and with sureties to the satisfaction of the Solicitor of the Treasury, and from time to time renews, strengthens, and increases his official bond, as the Secretary of the Treasury may direct. Each disbursing clerk, except the disbursing clerks of the Treasury Department, must, when directed so to do by the head of the Department, superintend the building occupied by his Department. Each is entitled to receive as compensation, in addition to his salary as fourth-class clerk, such sum as will make his whole compensation two thousand dollars a year. (Rev. Stats., 176.)

The act approved March 3, 1881 (21 Stats., 385), provides for one chief of Bureau of Accounts in the Department of State (who is also disbursing clerk), at \$2,000 per annum (18 Stats., 349); for the Treasury Department, two disbursing clerks, at \$2,500 per annum; in the office of the Second Auditor of the Treasury, one clerk of class three, with an additional salary of \$200; in the office of Auditor of the Treasury for the Post-Office Department, one disbursing clerk, at \$2,000; in the office of Register of the Treasury, one disbursing clerk, at \$2,000; in the Bureau of Engraving and Printing, one disbursing clerk, at \$200, in addition to his salary as clerk; in the War Department, one

disbursing clerk, at \$2,000; in the Navy Department, one disbursing clerk, at \$2,000; in the Department of the Interior, one disbursing clerk, at \$2,000; in the Post-Office Department, one disbursing clerk, at \$2,100; in the office of the Attorney-General, one disbursing clerk, at \$2,000.

One disbursing clerk, State Department, gives bond for \$30,000; one disbursing clerk, Treasury Department, gives bond for \$20,000; one disbursing clerk, Treasury Department, gives bond for \$10,000; one disbursing clerk, Register's Office, gives bond for \$10,000; one disbursing clerk, Bureau of Engraving and Printing, gives bond for \$95,000; one disbursing clerk, Sixth Auditor's Office, gives bond for \$10,000; one disbursing clerk, Second Auditor's Office, gives bond for \$10,000; one disbursing clerk, War Department, gives bond for \$20,000; one disbursing clerk, Navy Department, gives bond for \$20,000; one disbursing clerk, Department of the Interior, gives bond for \$40,000; one disbursing clerk, Post-Office Department, gives bond for \$40,000; one disbursing clerk, Department of Justice, gives bond for \$10,000. These bonds are filed with the First Comptroller. For form of bond, see Appendix, *post*, No. 8.

For forms of requisitions on the Secretary of the Treasury for advance of moneys, see Appendix, *post*, Nos. 9, 10, 11, 12, and 13.

DEPARTMENT OF AGRICULTURE.

Commissioner of Agriculture and Chief Clerk.

The Commissioner of Agriculture and the chief clerk are required to give bonds to the Treasurer of the United States, the former in the sum of \$10,000, and the latter in the sum of \$5,000, with sureties to be approved by the Solicitor of the Treasury. Their bonds are filed with the First Comptroller. (Rev. Stats., 524.) The disbursing clerk in the Department of Agriculture gives no bond. He is superintendent of the building, and receives a salary of \$1,800.

The Commissioner of Agriculture, on or before the 15th day of December in each year, makes a report in detail to Congress of all moneys expended by him, or under his direction. (Rev. Stats., 529.) For forms of bond and of requisition on the Secretary of the Treasury, see Appendix, *post*, Nos. 93 and 94.

Disbursing Agent for the Entomological Commission.

The disbursing agent of the Entomological Commission is appointed by the Secretary of the Interior, under the general authority conferred by section 3614 of the Revised Statutes, and the act of March 3, 1877 (19 Stats., 357), appropriating \$18,000 for the payment of the expenses

of “a commission of three skilled entomologists, to be appointed by the Secretary of the Interior, to report upon the depredations of the Rocky-Mountain locusts in the Western States and Territories, and the best practicable methods of preventing their recurrence, or guarding against their invasion, who may be attached to the United States Geological Surveys of the Territories.”

The act of June 16, 1880 (21 Stats., 276), transfers the commission from the Interior Department to the Agricultural Department. The disbursing agent gives bond for \$36,000, which formerly was approved by the Secretary of the Interior, but under the act cited will require the approval of the Commissioner of Agriculture. The bond is filed with the First Comptroller. For form, see Appendix, *post*, No. 103.

THE PUBLIC PRINTER.

Under the provisions of act February 22, 1867 (Rev. Stats., 3758), a Congressional Printer was elected by the Senate, who, by virtue of his office, was an officer of the Senate. The act June 20, 1874 (18 Stats., 88), making appropriations for the fiscal year ending June 30, 1875, provides that so much of the act of February 22, 1867, as provides for the election of such officer by the Senate, and provides that such officer shall be deemed an officer of the Senate, shall cease and determine and become of no effect from and after the date of the first vacancy occurring in said office; that the title of said officer shall hereafter be Public Printer, and he shall be deemed an officer of the United States, and said office shall be filled by the President, by and with the advice and consent of the Senate. (See also 19 Stats., 105.)

The act of July 31, 1876 (19 Stats., 105), provides that the Public Printer shall give bond in the sum of \$100,000, to be approved by the Secretary of the Interior. The bond is filed in the office of the First Comptroller. For salary of the Public Printer, see section 3759 of the Revised Statutes, and the act of August 15, 1876 (19 Stats., 146). For form of bond and form of requisition on the Secretary of the Treasury for advance of money, see Appendix of Forms, &c., *post*, Nos. 6 and 7.

SENATE AND HOUSE OF REPRESENTATIVES.

Secretary of the Senate.

The Secretary of the Senate makes disbursements for compensation of members and officers, and for contingent expenses of the Senate. (Rev. Stats., 56.) He is elected by the Senate, and gives bond to the

United States in the sum of \$20,000, to be approved by the First Comptroller, and deposited in the office of the latter. (Rev. Stats., 52, 56, 57, 59.) For form of bond, see Appendix of Forms, &c., *post*, No. 2. For form of requisition on the Secretary of the Treasury for advances, see Appendix No. 3.

For an extended consideration of the laws bearing upon disbursements for the Senate, see Senate-Disbursement case, 2 Lawrence, Compt. Dec., 401.

Clerk of the House of Representatives.

The Clerk of the House of Representatives is the disbursing officer for the contingent expenses of the House of Representatives. (Rev. Stats., 53, 58.) The contingent funds disbursed by him include, under long-continued practice, the salaries of all the employés of the House. The salaries and mileage of members are paid by the Sergeant-at-Arms of the House from advances made by the United States Treasurer, upon the certificate of the Speaker of the House; but the Treasurer is responsible for said payments, and the accounts are settled in his name. (Rev. Stats., 46, 53; see Rules of House.) The Clerk of the House of Representatives gives bond to the United States for \$20,000, subject to the approval of the First Comptroller, and it is deposited in the office of the First Comptroller. (Rev. Stats., 58, 59.)

Disbursing officers acting under the direction and authority of the Secretary of the Senate and the Clerk of the House of Representatives, must return precise and analytical statements and receipts for all moneys expended by them. (Rev. Stats., 62; Senate-Disbursement case, 2 Lawrence, Compt. Dec., 401.)

For forms of bond of the Clerk of the House and requisition for an advance of money, see Appendix of Forms, &c., *post*, Nos. 4 and 5.

Disbursing Agent for the Joint Committee on the Library of Congress.

It is provided by law that "the unexpended balance of any sum or sums appropriated by Congress for the increase of the general library, together with such sums as may hereafter be appropriated to the same purpose, shall be laid out under the direction of a joint committee of Congress upon the Library, to consist of three members of the Senate and three members of the House of Representatives." (Rev. Stats., 82.) This committee is authorized to establish regulations, not inconsistent with law, in relation to the Library of Congress or either department thereof. (Rev. Stats., 85.) Under this general authority the Joint Committee on the Library appoint a disbursing agent, who gives bond for \$20,000. This bond is *approved by the Solicitor of the Treasury*,

and is filed in the office of the First Comptroller. For form, see Appendix, *post*, No. 110.

[It would seem that this appointment is not authorized by section 85 of the Revised Statutes, or any other section. The President, by the Constitution, and the heads of Departments, by law, are alone authorized to appoint disbursing officers and disbursing agents. (Const., Art. II, sec. 2; Rev. Stats., 3614, 3648; *United States vs. Germaine*, 99 U. S., 508; *United States vs. Hartwell*, 6 Wall., 385; *Ex parte Randolph*, 2 Brock. C. C., 447.)]

THE LIBRARIAN OF CONGRESS.

The President, solely, appoints from time to time a Librarian to take charge of the Library of Congress. (Rev. Stats., 88.) He is required to give bond to the United States, before entering upon the duties of his office, in such sum and with such security as the Joint Committee upon the Library may deem sufficient, for the safe-keeping of the books, maps, and furniture confided to his care, and for the faithful discharge of his trust according to the regulations established for the government of the Library. The bond is deposited in the office of the Secretary of the Senate. (Rev. Stats., 89.) The salary of the Librarian is fixed at \$4,000 a year. (Rev. Stats., 90.) He is also required to give bond, with sureties, to the Treasurer of the United States, in the sum of \$5,000, "with the condition that he will render to the proper officers of the Treasury a true account of all moneys received by virtue of his office." (Rev. Stats., 4950.) This bond is approved by the President of the Senate and Speaker of the House of Representatives, and is filed in the office of the First Comptroller of the Treasury. For form of the latter bond, see Appendix, *post*, No. 108.

As disbursing officer for the salaries of the employés of the Library of Congress, he gives bond, under the general authority of law authorizing the Secretary of the Treasury and the First Comptroller to require bonds of disbursing agents, in the sum of \$6,000. (Rev. Stats., 3614, 3648.) This bond is approved by the Secretary of the Treasury and is filed in the office of the First Comptroller. For form of bond, see Appendix, *post*, No. 109.

DISTRICT OF COLUMBIA.

The Commissioners for the Government of the District of Columbia.

The act for the government of the District of Columbia, approved June 3, 1874 (18 Stats., 116, 117), provided for a government by three Commissioners, to be appointed by the President, by and with the

advice and consent of the Senate, at a salary of \$5,000 per annum, each to give bond in the sum of \$50,000.

The act of June 11, 1878 (20 Stats., 103), providing a permanent form of government for the District of Columbia, authorized the President to appoint two persons from civil life, and to detail from time to time an officer of the Corps of Engineers of the United States Army, as Commissioners for the District, from and after July 1, 1878, to exercise all the power and authority vested in the former Commissioners.

The two persons appointed from civil life must be citizens of the District. They hold office for three years respectively, receive an annual salary of \$5,000, and give bond with surety as required by existing law for \$50,000 each, subject to the approval of the Secretary of the Treasury. For form of bond and requisition on the Secretary of the Treasury for money, see Appendix, *post*, Nos. 95 and 96.

Register of Wills.

The register of wills for the District of Columbia is appointed by the President, by and with the advice and consent of the Senate. He is empowered to perform all the duties which were exercised and performed by the registers of wills of the orphans' courts of Maryland, prior to February 27, 1801. (Act February 27, 1801; 2 Stats., 107; Rev. Stats. Dist. Col., 929.) He gives a bond to the United States with two or more sureties, to be approved by the chief justice of the supreme court of the District, in the sum of \$5,000. (Act June 21, 1870; 16 Stats., 160; Rev. Stats. Dist. Col., 930.)

For fees allowed and paid to the register of wills, see Revised Statutes of the District of Columbia, 931 and 932. His bond is filed with the clerk of the court.

Notaries Public.

Notaries public are appointed by the President for a term of five years, and are removable at discretion. (20 Stats., 101.) There is no limit to the number which may be appointed. Before entering on the duties of their office, they are required to take the oath, and give bond to the United States in the sum of \$2,000, as provided in section 979 of the Revised Statutes of the District of Columbia.

Superintendent of the Government Hospital for the Insane.

The superintendent of the Government Hospital for the Insane of the Army and Navy and of the District of Columbia is appointed by the Secretary of the Interior, at a salary of \$2,500, and gives bond with such securities as may be required by the Secretary of the Inte-

rior. He is the responsible disbursing agent of the institution, and is *ex-officio* secretary of the board of visitors. The amount of his bond is now fixed at \$2,500. It is filed in the office of the First Comptroller. (Rev. Stats., 4839, 4858.) For form, see Appendix, *post*, No. 97.

Superintendent of the Columbia Institution for the Deaf and Dumb.

The superintendent of the Columbia Institution for the Instruction of the Deaf and Dumb is required to make a full and complete statement of all the expenditures made by virtue of any appropriation of Congress, at the commencement of every December. He receives his appointment as disbursing agent of the institution from the Secretary of the Interior, and gives bond in the sum of \$10,000. (Rev. Stats., 3614, 4867.) His bond is lodged in the office of the First Comptroller. For form, see Appendix, *post*, No. 98.

Treasurer of the Columbia Hospital for Women and Lying-in Asylum.

The treasurer of Columbia Hospital for Women and Lying-in Asylum, as disbursing agent, gives bond in the sum of \$10,000. His bond is filed with the First Comptroller. See Appendix, *post*, No. 99.

Treasurer of the Reform School.

The treasurer of the Reform School of the District of Columbia is appointed by the board of trustees, and gives bond in \$20,000, with sureties to be approved by the trustees and the Solicitor of the Treasury. For form of bond, see Appendix, *post*, No. 100.

Disbursing Agents of Charitable Institutions.

The charities in the District of Columbia, not heretofore enumerated, are: Washington Asylum (work-house connected therewith), Georgetown Almshouse, Children's Hospital, St. Ann's Infant Asylum, Industrial Home School, National Association for Colored Women and Children, Women's Christian Association, Little Sisters of the Poor, and German Orphan Asylum.

Appropriations are from time to time made by Congress for the benefit of these institutions, and those who act as their disbursing agents give bond as such. (Providence Hospital case, *ante*, 80; Butler's case, *ante*, 25; Sister Elizabeth's case, 2 Lawrence, Compt. Dec., 122.) The act of June 4, 1880, making appropriations for the District of Columbia (21 Stats., 157), provides that "The Commissioners of the District of Columbia are authorized to visit, investigate the management of, and have a report of the receipts and expenditures of the above-mentioned private charitable institutions, so long as they respectively accept money appropriated by Congress for their aid."

Some of the officers of the District government, as auditor, comptroller, collector of taxes, treasurer (whose office is abolished by law on and after June 30, 1881), and other minor officers, are required to give bond to the District of Columbia—some under the requirements of the acts of the legislative assembly, and some by direction of the District Commissioners. Such officers, however, can in no sense be regarded as disbursing officers, or bonded officers, of the United States.

Disbursing Officers for Public Buildings and Grounds in the District of Columbia.

The Chief of Engineers of the Army has charge of the public buildings and grounds in the District of Columbia, under such regulations as may be prescribed by the President through the War Department, except those buildings and grounds which are otherwise provided for by law. (Rev. Stats., 1797; 14 Stats., 466; 18 Stats., 14.)

The estimates for public buildings and grounds in his charge are approved and submitted by the Secretary of War, through the Treasury Department, to the two houses of Congress, and the expenditures are made under the direction of the Secretary of War. (Rev. Stats., 1798.) The Chief of Engineers is authorized to employ such number of persons, and at such rates of compensation as may be appropriated for by Congress. (Rev. Stats., 1799.) He has the immediate superintendence of the Washington Aqueduct, and of all other public works and improvements in the District of Columbia in which the Government has an interest, and which are not otherwise specially provided for by law; and all moneys appropriated for them are expended under the direction of the Secretary of War. (Rev. Stats., 1800, 1802, 1807.)

The Chief of Engineers details an officer of the Engineer Corps to make the disbursements; and the accounts of the officer so detailed are settled by the accounting officers of the Treasury. Neither the Chief of Engineers nor the officer so detailed gives any bond. For the reason or origin of this exemption from the general requirement in such cases, see the opinion of Attorney-General Cushing, of April 20, 1853 (6 Op., 24), and *post*, page 635.

The authority given in section 3648 to advance money "to persons in the military and naval service" who are not disbursing officers of the Government, is confined to the making of advances to such persons only when they are "employed on distant stations, where the discharge of the pay and emoluments to which they may be entitled cannot be regularly effected." The terms of the section in the granting of this authority cover only such advances as are necessary to dis-

charge such "pay and emoluments." In practice, however, advances of moneys appropriated for the construction of public works are made to officers of the Engineer Corps of the Army without requiring bonds from them. The question as to whether bond should not in such cases be required was submitted to President Pierce, April 18, 1853, by First Comptroller Whittlesey.

The superintendence of the extension of the Capitol having been transferred to the War Department, the Comptroller asked the President for a decision on the question as to whether bond should not be executed by the engineer officer superintending the extension, as a disbursing agent, and called attention to the provisions of the act of May 15, 1820, chap. 102, (3 Stats., 582), the third section of which contemplated the requirement of bonds from all officers employed in disbursing money under the War or Navy Department; and also to the act of January 31, 1823—now section 3648 of the Revised Statutes. The President submitted the question to Attorney-General Cushing, who gave as his opinion that the officer was not required by law to give the bond, "and that it is a matter within the discretion of the President to require bond in such case or not, according to his view of the exigencies of the public service." (6 Op., 24.)

The President then made the following indorsement on the letter of the First Comptroller:

"I have taken the opinion of the Attorney-General upon the question involved in the enclosed letter. Captain Meigs will proceed in disbursements without filing bonds."

The Secretary of War, in pursuance of this correspondence, wrote to Captain Meigs as follows:

"The President has ordered that bonds shall not be required of you for disbursements made in the discharge of the duty with which you are charged.

"JEFFERSON DAVIS,
"Secretary of War.

"APRIL 25, 1853."

This decision in respect of advances to officers of the Engineer Corps of public money for disbursement has been accepted by the Treasury Department as valid. Except in such case, and that of the firm of Morton, Rose & Co., bankers, and financial agents of the Government in London, bonds are invariably required of disbursing agents of the Government as well as of disbursing officers; since the requirement of bonds in every case, unless waived by express direction of the President, seems to accord best with the policy of the laws enacted for the collection, safe-keeping, transfer, and disbursement of the public moneys.

Disbursing Officer for the Washington Monument.

The act of August 2, 1876 (19 Stats., 123), provides that the construction of the monument shall be under the direction and supervision of the President of the United States, the Supervising Architect of the Treasury Department, the Architect of the Capitol, the Chief of Engineers of the Army, and the First Vice-President of the Washington National Monument Society, who form a joint commission.

The Chief of Engineers of the Army, as chairman of the building committee, details the same officer who is in charge of public buildings and grounds to make the disbursements of the appropriation annually made for the completion of the monument; and the accounts are settled by the accounting officers of the Treasury.

MISCELLANEOUS.

*Disbursing Agent for the National Board of Health.*

This board was created by the act of March 3, 1879. (20 Stats., 484.) It consists of seven members, appointed by the President, by and with the advice and consent of the Senate (not more than one appointed from any one State), to receive \$10 per diem for their services, and reasonable expenses; and one medical officer of the Army, one of the Navy, and one of the Marine-Hospital Service, and an officer from the Department of Justice, to be detailed by the Secretaries of the several Departments and the Attorney-General, respectively. These detailed officers receive no compensation for said services.

The chief clerk of the National Board of Health is appointed as a disbursing agent for the Treasury Department under the provisions of section 3614 of the Revised Statutes, and the act of July 1, 1879, section 5 (21 Stats., 47). He gives a bond for \$20,000, which is filed with the First Comptroller. For form of bond, see Appendix, *post*, No. 8.

Disbursing Agent of the Appropriation for North American Ethnology.

The disbursing agent, North American Ethnology, under the Smithsonian Institution, is appointed by the Secretary of the Treasury under the general authority conferred by section 3614 of the Revised Statutes, and the act of March 3, 1879 (20 Stats., 397), appropriating the sum of \$20,000 "for completing and preparing for publication the contributions to North American Ethnology, under the Smithsonian Institution." A like appropriation has been made for the fiscal year ending June 30, 1882. The disbursing agent gives bond for \$10,000.

with sureties approved by the Secretary of the Smithsonian Institution. The bond is filed in the office of the First Comptroller. For form of bond, see Appendix, *post*, No. 103.

Disbursing Agents for the Fish Commissioner.

The Commissioner of Fish and Fisheries is appointed by the President, by and with the advice and consent of the Senate, from among the civil officers or employes of the Government. He must be a person of proved scientific and practical acquaintance with the fishes of the coast, and is required to serve without additional salary. (Rev. Stats., 4395, 4396, 4397, 4398.)

The chief disbursing agent is appointed by the Secretary of the Treasury pursuant to section 3614 of the Revised Statutes, and gives bond for \$8,000; the subordinate disbursing agents give bond for \$5,000. The bonds are approved by the Secretary of the Treasury, and filed with the First Comptroller. For form, see Appendix, *post*, No. 103.

Disbursing Agent for the Executive Mansion.

The disbursing agent of the contingent expenses of the Executive Mansion is appointed by the President. He gives bond for \$10,000, approved by the Secretary of the Treasury, and filed in the office of the First Comptroller. (Rev. Stats., 3614, 3648.) For form of bond, see Appendix, *post*, No. 105.

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ADVANCES OF PUBLIC MONEY TO DISBURSING OFFICERS AND
AGENTS OF THE GOVERNMENT.

Section 3648 of the Revised Statutes, which was taken from section 1 of the act of January 1, 1823, chap. 9 (3 Stats., 723), provides that—

“No advance of public money shall be made in any case whatever.
* * * It shall, however, be lawful, under the special direction of the President, to make such advances to the disbursing officers of the Government as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfillment of the public engagements. The President may also direct such advances as he may deem necessary and proper, to persons in the military and naval service employed on distant stations, where the discharge of the pay and emoluments to which they may be entitled cannot be regularly effected.”

The word “officer” in this section has, in practice, been construed to include agents appointed by the President or heads of Departments to make disbursements in cases in which no officer is charged by law with the duty of making such disbursements. (Rev. Stats., 3614; Birch’s

case, *ante*, 154; Senate-Disbursement case, 2 Lawrence, Compt. Dec., 401.) This construction is supported by sections 2 and 3 of the act of 1823, and by many acts of Congress prescribing duties respecting the receipt and disbursement of public moneys; *e. g.*, *agents* are included with *officers* in the following sections of the Revised Statutes: 3617, 3619, 3622, 3623, 3646, 3647, 3651. The right to employ corporations as fiscal and disbursing agents of the Government is recognized in section 3654 of the Revised Statutes. (Huidekoper's case, 2 Lawrence, Compt. Dec., 359.)

All officers who are charged by law with the disbursing of public moneys are, by the terms of the several acts which created their offices, required to give bond to the United States for the faithful discharge of their duties. When disbursing agents are employed by the heads of Departments, section 3614 of the Revised Statutes requires such agents, before entering upon duty, to give bond in such form and with such security as the head of the Department or officer employing him may approve. Officers who are not required by law to give bonds, may, in proper cases, be designated by the head of the Department to which they belong to make disbursements of moneys when no officer is charged by law with making such disbursements; but in all such cases bonds, as provided for in section 3614, are required.

No advance of public money can lawfully be made to any disbursing officer or agent, whether bonded or not, unless "under the special direction of the President." (Inspectors' case, *ante*, 201.) It seems that, prior to the year 1853, such advances were authorized by special direction, in literal execution of the statute. To avoid the inconvenience of this practice, First Comptroller Whittlesey addressed a letter to the Secretary of the Treasury, as follows:

TREASURY DEPARTMENT,
First Comptroller's Office, March 21, 1853.

SIR: The accompanying list is handed to you to present to the President of the United States, if you think proper, to obtain his authority to make such advances to disbursing agents and officers as the interests of the civil service may from time to time require.

I also hand to you the form of a certificate adopted on the like occasion by the late President by virtue of the act of January 31, 1823.

Most sincerely, yours,

ELISHA WHITTLESEY.

Hon. JAMES GUTHRIE,
Secretary of the Treasury.

TREASURY DEPARTMENT,
Comptroller's Office, March 21, 1853.

To the PRESIDENT OF THE UNITED STATES.

SIR: The power to make advances of money to officers and agents having heretofore been granted under special circumstances; to remove therefore all inconvenience which may arise from any uncertainty or doubt upon the subject, I have the honor to ask, in conformity with the authority for this purpose which is given to the President of the United States by the provisions of an act of Congress entitled "An act concerning the disbursement of the public money," approved January 31, 1823, that you will authorize by your direction such advances of money to be made to the following description of officers and agents as the interest of the civil service may from time to time require, viz:

To the Speaker of the House of Representatives of the United States.

To the Clerk of said House.

To the Secretary of the Senate of the United States.

To the Commissioner of Public Buildings.

To the warden of the penitentiary in the District of Columbia.

To the Commissioner of Patents.

To the Librarian of Congress.

To the agent for the Joint Library Committee of Congress.

To the disbursing agent for the Department of State.

To the assistant treasurers of the United States and their disbursing agents, when duly appointed by the assistant treasurer.

To the agents to pay the interest on the public debt, and also to pay dividends not heretofore claimed, designated unclaimed dividends.

To the disbursing agents of the Treasury and the respective agents for the payment of salaries and contingent expenses in the several branches of the Treasury Department.

To the disbursing agent in the office of the Secretary of War and the respective agents for the payment of salaries and contingent expenses in the several branches of the War Department.

To the disbursing agent of the Navy Department.

To the disbursing agent of the Secretary of the Interior.

To the superintendents of the respective Executive buildings at the city of Washington.

To the disbursing agent of the Post-Office Department.

To the Attorney-General of the United States.

To the marshals of the several districts and Territories of the United States, and also the District of Columbia.

To the coroner of the county of Washington, D. C.

To the governors and secretaries of the respective Territories of the United States where appropriations have been or shall be for them to disburse.

To the authorized agent or agents to receive money to defray the expenses of running the boundary line between Mexico and the United States, and such other civil agent or agents authorized, or which may be authorized, to disburse money in California.

To the surveyors-general of the public lands of the United States.

To the Treasurer of the Mint of the United States, and the several superintendents and treasurers of the respective branches of said mint.

To the collectors of customs and disbursing agents of the Treasury, and as superintendents of light-houses, and as agents of marine hospitals.

To the ministers of the United States, chargés d'affaires, and secretaries of legation of the United States.

To the bankers of the United States in London.

To the consuls of the United States.

To the disbursing agent of the Coast Survey.

To the receivers of public moneys as disbursing agents.

To the commissioners for the erection of the custom-houses.

To the agents for marine hospitals, and agents for the erection or repairs of public buildings or works other than those within the District of Columbia.

To such persons as are engaged in executing paintings and statues for the United States.

To the superintendent of the Insane Asylum in the District of Columbia, under the act of August 31, 1852.

The President gave direction as follows:

WASHINGTON, *March 22, 1853.*

I hereby direct that such advances be made from time to time to the disbursing officers above named as may be necessary to the faithful and prompt discharge of their respective duties and to the fulfilment of the public engagements; but in no case where the agent is to give security shall the amount in his hands at any one time exceed the amount of his security.

FRANKLIN PIERCE.

The following correspondence and Executive directions show how other cases of necessary advances to disbursing officers and agents not above designated, or not supposed to be included in the above directions, were provided for:

TREASURY DEPARTMENT,
Comptroller's Office, July 17, 1861.

SIR: In the act making additional appropriations for the support of the Army for the fiscal year ending June 30, 1862, and appropriations of arrearages for the fiscal year ending June 30, 1861, last clause of the first section, the following appropriation is made, to wit: "For amount required to refund the States' expenses incurred on account of volunteers called into the field, ten millions dollars."

The governor, treasurer, and auditor of Indiana are in this city, wishing to have refunded out of said sum a part of money expended on account of volunteers called into the field from that State. They have no vouchers to show any expenses incurred, so that no account can be stated by the accounting officers for payment. By the act of January 31, 1823, vol. 3, page 723, "the President of the United States is authorized to make such advances to the disbursing officers of the Government as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfilment of the public engagements," &c.

The appropriation of ten millions must be carried upon the books by an appropriation warrant, and settled by settled accounts, as in all other cases.

When I had the pleasure to see you this morning, I supposed that Governor Morton would accept the appointment of disbursing agent for the money that might be advanced to pay the expenses incurred by

the State of Indiana; but, on returning from your Department, it was arranged between them that Jonathan S. Harvey, treasurer of the State of Indiana, should disburse the money that might be advanced by the especial direction of the President under the act mentioned.

My opinion is, a disbursing agent should be appointed, and I know of no objection against Mr. Harvey. Bonds should be given, and the directions of the President obtained for an advance, as authorized by the act referred to. Permit me to suggest to you that great caution and care should be observed in disbursing this appropriation; your Department, the President, and the country are deeply concerned in being able to faithfully account for all money placed at the disposal of every branch of the Government.

The governor of Indiana and the other gentlemen mentioned are desirous to leave here to-morrow or next day, and permit me to ask your early attention to this subject.

Most respectfully,

ELISHA WHITTLESEY.

Hon. SIMON CAMERON,
Secretary of War.

—

EXECUTIVE MANSION,
Washington, D. C., March 11, 1869.

SIR: Under authority of the act of January 31, 1823, "concerning the disbursement of public money," permission is hereby given that needful advances of money be made to disbursing officers in the civil service of the Government who may have given bonds as required by law, to such military and naval officers as may by law be authorized to disburse the same, and to the bankers of the United States in London, as requested in your letter of the [blank] instant.

Very respectfully,

U. S. GRANT.

Hon. R. W. TAYLER,
First Comptroller, Treasury Department.

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TREASURY DEPARTMENT,
First Comptroller's Office,
Washington, D. C., September 8, 1873.

The PRESIDENT:

I have the honor to enclose herewith a copy of a communication addressed by the President to the Comptroller, March 11, 1869, and to say that, by the construction placed upon the communication, officers of the Army and Navy acting as engineers or inspectors in the Light-House Service are not included as officers to whom advances are to be made.

The Light-House Board inform me that, for convenience and efficacy of the service, it is necessary that moneys be advanced to the officers named, and that as these officers, in discharge of their duties, as inspectors and engineers, regularly visit light-stations, the disbursements will be made with greater economy as well as regularity.

If the President concurs, I respectfully request that authority be given; and enclose a memorandum of a form in which it may be put. The Secretary's signature to the memorandum signifies his approval.

Respectfully submitted:

R. W. TAYLER, *Comptroller.*

Permission is hereby given that needful advances of money appropriated for the Light-House Establishment may be made to officers of the Army and Navy, acting as engineers or inspectors of the Light-House Service.

W. A. RICHARDSON,
Secretary.

SEPTEMBER 8. 1873.

Approved September 10, 1873:

U. S. GRANT.

—
EXECUTIVE MANSION,
Washington, D. C., June 15, 1877.

Under authority of section 3648 of the Revised Statutes of the United States, permission is hereby given that needful advances of money be made to disbursing officers in the civil service of the Government who may have given bonds as required by law; to such military and naval officers as may by law be authorized to disburse the same; of moneys appropriated for the Light-house Establishment to officers of the Army and Navy acting as engineers or inspectors in that service; and to the bankers of the United States in London.

R. B. HAYES.

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The following instructions relative to public moneys and official checks of United States disbursing officers are still in force:

1876. }
DEPARTMENT NO. 107.
Ind. Treasury Div. No. 26. }

TREASURY DEPARTMENT,
Washington, D. C., August 24, 1876.

The following sections of the Revised Statutes are published for the information and guidance of all concerned:

“SECTION 3620. It shall be the duty of every disbursing officer having any public money intrusted to him for disbursement, to deposit the same with the Treasurer or some one of the assistant treasurers of the United States, and to draw for the same only as it may be required for payments to be made by him in pursuance of law; and all transfers from the Treasurer of the United States to a disbursing officer shall be by draft or warrant on the Treasury or an assistant treasurer of the United States. In places, however, where there is no Treasurer or assistant treasurer, the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize in writing the deposit of such public money in any other public depository, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors.”

“SECTION 548. Every disbursing officer of the United States who deposits any public money intrusted to him in any place or in any manner, except as authorized by law, or converts to his own use in any way whatever, or loans with or without interest, or for any purpose not prescribed by law withdraws from the Treasurer or any assistant treasurer, or any authorized depository, or for any purpose not prescribed by law transfers or applies any portion of the public money intrusted

to him, is, in every such act, deemed guilty of an embezzlement of the money so deposited, converted, loaned, withdrawn, transferred, or applied; and shall be punished by imprisonment with hard labor for a term not less than one year nor more than ten years, or by a fine of not more than the amount embezzled or less than one thousand dollars, or by both such fine and imprisonment."

In accordance with the provisions of the above sections, any public money advanced to disbursing officers of the United States must be deposited immediately to their respective credits, with either the United States Treasurer, some assistant treasurer, or designated depository, other than a national bank depository, nearest or most convenient, or, by special direction of the Secretary of the Treasury, with a national-bank depository, except—

(1.) Any disbursing officer of the War Department, specially authorized by the Secretary of War, when stationed on the extreme frontier or at places far remote from such depositories, may keep, at his own risk, such moneys as may be intrusted to him for disbursement.

(2.) Any officer receiving money remitted to him upon specific estimates, may disburse it accordingly, without waiting to place it in a depository, provided the payments are due, and he prefers this method to that of drawing checks.

Any check drawn by a disbursing officer upon moneys thus deposited, must be in favor of the party, by name, to whom the payment is to be made, and payable to "order" or "bearer," with these exceptions:

(1) To make payments of individual pensions, checks for which must be made payable to "order," (2) to make payments of amounts not exceeding twenty dollars, (3) to make payments at a distance from a depository, and (4) to make payments of fixed salaries due at a certain period; in either of which cases, except the first, any disbursing officer may draw his check in favor of himself or bearer for such amount as may be necessary for such payment, but in the last-named case the check must be drawn not more than two days before the salaries become due.

Any disbursing officer or agent drawing checks on moneys deposited to his official credit, must state on the face or back of each check the object or purpose to which the avails are to be applied, except upon checks issued in payment of individual pensions, the special form of such checks indicating sufficiently the character of the disbursement.

Such statement may be made in brief form, but must clearly indicate the object of the expenditure, as, for instance, "pay," "pay-roll," or "payment of troops," adding the fort or station; "purchase of subsistence" or other supplies; "on contract for construction," mentioning the fortification or other public work for which the payment is made; "payments under \$20;" "to pay foreign pensions," &c.

Checks will not be returned to the drawer after their payment, but the depository with whom the account is kept shall furnish the officer with a monthly statement of his deposit account.

No allowance will be made to any disbursing officer for expenses charged for collecting money on checks.

In case of the death, resignation, or removal of any disbursing officer, checks previously drawn by him will be paid from the funds to his credit, unless such checks have been drawn more than four months before their presentation, or reasons exist for suspecting fraud.

Every disbursing officer when opening his first account, before issuing

any checks, will furnish the depositary on whom the checks are drawn with his official signature duly verified by some officer whose signature is known to the depositary.

For every deposit made by a disbursing officer, to his official credit, a receipt in form as below shall be given, setting forth, besides its serial number and the place and date of issue, the character of the funds, i. e., whether coin or currency; and if the credit is made by a disbursing officer's check transferring funds to another disbursing officer, the essential items of the check shall be enumerated; if by a Treasury draft, like items shall be given, including the warrant number; the title of each officer shall be expressed, and the title of the disbursing account shall also show for what branch of the public service the account is kept, as it is essential for the proper transaction of departmental business that accounts of moneys advanced from different bureaus to a disbursing officer serving in two or more distinct capacities, be kept separate and distinct from each other, and be so reported to the Department both by the officer and the depositary—the receipt to be retained by the officer in whose favor it is issued:

No. ____.

OFFICE OF THE U. S. (Assistant Treasurer or Depositary,)

_____, _____, 18__.

RECEIVED of _____, _____, _____ dollars, consisting of _____, to be placed to his credit as _____, and subject only to his check in that official capacity.

\$_____.

_____,
U. S. (Assistant Treasurer or Depositary.)

These regulations are intended to supersede those of January 2, 1872.

CHAS. F. CONANT,
Acting Secretary.

Circular Instructions to Public Officers appointed to Disburse Moneys Appropriated for Construction of Public Buildings.

1878.
DEPARTMENT No. 29.
Supervising Architect's Office. }

TREASURY DEPARTMENT,
Washington, D. C., March 25, 1878.

I. Funds required for the prosecution of work will be advanced upon the estimates of the superintendent in charge, which estimates are required to be placed in the hands of the disbursing agent on or before the first day of the month for which made, for record and transmission to this Department. Upon this paper the disbursing agent will note in the marginal blank prepared for that purpose, the total amount of funds received, the amount paid for site, the amount paid on superintendent's certificates, the amount of repayments to the Treasury, the amount retained as commissions on disbursements, and the balance in hand.

II. Moneys advanced to the disbursing agent will be paid out only upon vouchers properly certified by the superintendent, except in the case of disbursing agents' commissions, unless otherwise specially instructed by the Secretary of the Treasury. Disbursing agents are accountable under their bonds for the safe custody and proper disbursement of the moneys advanced to them. (In no case will funds be placed in the hands of the superintendent for disbursement.)

III. Should there be any amounts unpaid on any pay-roll when the monthly accounts are ready for transmission to the Department, the names of the employés to whom such amounts are due, with the length of service, the dates between which rendered, the rates per day and the amounts due, will be transferred to the non-payment roll (Form 4), and they will accompany each monthly account in this manner until paid.

IV. Vouchers are prepared in favor of the person, firm, or corporation with whom the obligation has been contracted; the receipt for the amount must strictly correspond therewith, and be made by the person, or one of the persons, to whom the money is due. In case payment is directed to be made to an attorney, a duly executed power of attorney, or properly attested copy, must be furnished, to accompany the voucher which it covers when the accounts are rendered. As powers of attorney are strictly construed, they should be so explicit in terms as to leave no room for doubt as to the extent of authority intended by the principal to be delegated. When the public creditor is a corporate body supplying materials or services under contract, the first voucher should be accompanied by a properly authenticated copy, under seal, of the vote or order of the corporation authorizing the person signing to so make the corporate signature and receive the money. Subsequent vouchers under the same contract will bear upon their face a reference to this authority already furnished. When the payee is unable to write, he will make his signature by mark, and such signature must be properly attested.

V. Payment will not be made to heirs, executors, administrators, receivers, assignees or other successors, or legal representatives (except in the case of attorneys referred to in the preceding section), until the account has been passed upon by the proper accounting officers of the Treasury. To enable these officers to acquire a full understanding of the subject, and to take such action as the laws and regulations prescribe in such cases, the account, covered by full letter of explanation, must be sent to this Department accompanied by the original letters of administration (if any are issued) or properly authenticated order of the court, as the case may be, when, after consideration, instructions as to payment will be given.

VI. The disbursing agent should attend personally, wherever practicable, to the paying out of all moneys, and receipts to the pay-rolls as well as other vouchers, except in the case of non-resident creditors, should be made in his presence, or in that of some trusty person whom he may depute for that purpose. Immediate payment should be made to all mechanics and laborers at the time of signing the rolls.

VII. In order to facilitate the examination of disbursing agents' accounts whenever such examination may be directed, as well as to enable them to keep their records in a proper manner, each voucher should be paid by a single check, the stub of which check should be identified with the voucher by memorandum of the voucher number. An entire pay-roll will be regarded as one voucher, the amount of which will be drawn by one check, and the money paid direct to the employés. As the superintendent's office is located immediately at the work, and as he is required to be present during all the working-hours of the day, much time will be saved, and identification of the men facilitated, if the rolls are paid at his office; and for these reasons, this class of disbursements is directed to be made at that place.

VIII. The disbursing agent will not regard processes of attachment against public funds, nor under any circumstances pay into the hands of a creditor of an employé in the public service any moneys due such employé except upon a duly executed power of attorney.

IX. Before making payment of any voucher, the disbursing agent should give it careful scrutiny to see that it is in proper form, that its computations are correct, that the expenditures are incurred under proper authority, that the prices are charged in accordance with contract rates; and when any fact comes to the knowledge of the disbursing agent tending to show that the services or supplies charged for have not been actually rendered or delivered, or are not at fair or contract prices, or that the expenditure is extravagant or unauthorized, it will be his duty, notwithstanding the voucher therefor may bear the certificate of the superintendent, to withhold payment and report the case to the Department for instructions. Vouchers will bear no credits by way of return or sale of public property of any kind; such property, when disposed of, must be sold for cash, and the proceeds deposited according to law.

X. By section 3622, Revised Statutes, it is made the duty of all disbursing officers to transmit their accounts "to the bureau to which they pertain within ten days after the expiration of each successive month." It is desirable in the case of accounts for construction or repairs of public buildings that the accounts therefor, with the vouchers necessary to their correct and prompt settlement, be received at this Department at a date prior to that provided by the statute. Disbursing agents will therefore, wherever practicable, close their accounts for any month on the first day of the succeeding month, and forward such accounts on the evening of the same day to the Secretary of the Treasury.

XI. The monthly accounts comprise the following-named papers: One set of the vouchers (Forms 2 and 3) paid during the month, one abstract (Form 5) of such vouchers, and one account current (Form 6)—which will be sent to this Department as herein directed. Duplicates of the vouchers paid will be retained by the disbursing agent, his copies of abstracts and accounts current being kept in books to be furnished for that purpose by the Department. One abstract and one account current, each month, will be given to the superintendent for the files of his office.

XII. All communications from this Department to the disbursing agent should be acknowledged on the day of the receipt if practicable. All official communications from him will be addressed to the Secretary of the Treasury, and all documents transmitted will be so indorsed as to show at a glance their purport. If there be more than one, the enclosures should be enumerated in the letter of transmission.

XIII. The attention of disbursing agents is especially directed to the following-named sections of the Revised Statutes of the United States: 3618, 3620, 3621, 3622, 3623, 3624, 3633, 3733, 5488, 5491, 5496, and 5503, and to Department circular, No. 107, August 24, 1876.

JOHN SHERMAN,
Secretary.

APPENDIX

OF

FORMS OF OFFICIAL BONDS OF THE DISBURSING AND OTHER BONDED OFFICERS OF THE UNITED STATES, AND OF ESTIMATES AND REQUISITIONS FOR ADVANCES OF MONEY.

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No. 1.

Official Bond of ———, as Treasurer of the United States. (Ante, 597-'9.)

Dated ———, 188—. Amount, \$150,000.

KNOW ALL MEN BY THESE PRESENTS, That we, ———, as principal, and ——— and ———, as sureties, are held and firmly bound unto the United States of America in the full and just sum of ——— thousand dollars, lawful money, to be paid to the said United States; for which payment, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators, and each of them, firmly by these presents. Signed with our hands and sealed with our seals, and dated this ——— day of ———, in the year of our Lord one thousand eight hundred and ———.

The condition of the foregoing obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said ——— Treasurer of the United States, and in due form of law caused to be issued to him, as such, a commission, bearing date the ——— day of ———, anno Domini one thousand eight hundred and ———:

Now, therefore, if the said _____ has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge, all the duties of said office according to law, and if the persons by him employed shall perform with fidelity the duties of their respective offices, and, moreover, has well, truly, and faithfully kept, and shall well, truly, and faithfully keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as allowed by law, all the public money collected by him, or otherwise at any time placed in his possession and custody, till the same shall be ordered by the proper Department or officer of the Government to be transferred or paid out; and when such orders for transfer or payment have been or shall be received, has faithfully and promptly made, and shall faithfully and promptly make, the same as directed, and has done and shall do and perform all other duties, as fiscal agent of the Government, which have been or may be imposed by any act of Congress, or by any regulation of the Treasury Department made in conformity to law; and also has done and performed, and shall do and perform, all acts and duties required by law, or by direction of any of the Executive Departments of the Government, as agent for making any disbursements which either of the heads of those Departments may be required by law to make, and which are of a character to be made by a depositary constituted by law, consistently with the other official duties imposed upon him, then this obligation to be void and of none effect; otherwise, it shall abide and remain in full force and virtue.

_____. [L. S.]
_____. [L. S.]
_____. [L. S.]

Signed, sealed, and delivered in presence of—
_____.
_____.

UNITED STATES OF AMERICA, } ss:
_____, _____, _____.

I, _____, hereby certify that the sureties named, and who have signed the foregoing bond, are responsible, and sufficient to insure the payment of the entire penalty named therein. Witness my hand and seal, this _____ day of _____, 188—.

OFFICE OF THE SOLICITOR OF THE TREASURY,
_____, 188—.

I hereby certify that the sum named in, and the sureties to this bond, seem reasonable and safe to me, and are to my satisfaction.
_____,
Solicitor of the Treasury.

No. 2.

Bond of Secretary of United States Senate. (Ante, 629-'30.)
Amount, \$20,000.

KNOW ALL MEN BY THESE PRESENTS, That we, _____, _____, and _____, are held and firmly bound to the United States of America in the sum of twenty thousand dollars; to the payment whereof we bind ourselves jointly and severally, our joint and several heirs, executors, and administrators.

Witness our hands and seals, this _____ day of _____, one thousand eight hundred and eighty _____.

The condition of the above obligation is such, that if the said _____, who has been elected Secretary of the Senate of the United States, shall well and faithfully apply and disburse such funds as may be drawn by him, as disbursing officer of the Senate, from the Treasury of the United States, then the above obligation to be void; otherwise, to remain in full force.

_____. [L. S.]
_____. [L. S.]
_____. [L. S.]

Signed, sealed, and delivered in presence of—
_____.
_____.

The securities on the within bond are sufficient for the amount thereof.

_____, Senator from _____.
_____, Senator from _____.
_____, Senator from _____.

No. 3.

Requisition of the Secretary of Senate for Advrance of Money.

SENATE OF THE UNITED STATES,
Washington, ———, 188—.

Hon. ———,
Secretary of the Treasury.

SIR: Please cause a warrant to be issued in my favor for the sum of ———, with which I am to be charged and held accountable under the following heads of appropriations.

Very respectfully,

—————,
Secretary of the Senate.

APPROPRIATIONS.

Salaries and mileage of Senators\$
Salaries of officers, &c
Contingent

—————,
COMPTROLLER'S OFFICE, ———, 188—.

\$———. I recommend the advance of \$—— on the within requisition from the appropriations named therein.

—————,
Comptroller.

No. 4.

Bond of Clerk of House of Representatives. (Ante, 630.)
Amount, \$20,000.

KNOW ALL MEN BY THESE PRESENTS, That we, ———, ———, and ———, are held and firmly bound unto the United States of America in the full and just sum of twenty thousand dollars, lawful money of the United States; to which payment, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, and administrators.

The condition of the above bond is such, that whereas the above-named ——— was, on the ——— day of ———, in the year of our Lord one thousand eight hundred and eighty ———, elected by the House of Representatives of the United States of America to be the Clerk of the said House for the ——— Congress; that if the said ——— shall have faithfully applied, and shall faithfully apply and disburse, all such moneys as shall come and may come into his hands, out of the appropriations made and which shall be made, for defraying the contingent expenses of the House of Representatives, then this obligation is to be void, and of none effect; otherwise, to remain in full force and virtue.

Witness our hands and seals, this ——— day of ———, eighteen hundred and eighty ———.

————— [L. S.]
————— [L. S.]
————— [L. S.]

Signed, sealed, and delivered in presence of—
—————
—————

No. 5.

Requisition for Advance of Money to Clerk of House of Representatives.

OFFICE OF THE HOUSE OF REPRESENTATIVES U. S.,
Washington, D. C., ———, 188—.

Hon. ———,
Secretary of the Treasury.

SIR: Please cause a warrant to be issued in favor of ———, Treasurer of the United States, to be by him deposited in the Treasury to the credit of ———, Clerk of the House of Representatives of the United States, to meet checks

drawn by him as disbursing officer of the House, for the sum of _____, with which he is to be charged and held accountable under the following heads of appropriation for the fiscal year ending June 30, 188 .

Very respectfully,

_____,
Clerk of the House of Representatives U. S.

APPROPRIATIONS.

COMPTROLLER'S OFFICE,
_____, 188—.

§_____.
I recommend the advance of \$ _____ on the within requisition from the appropriations named therein.

_____,
Comptroller.

No. 6.

Bond of Public Printer. (Ante, 629.)

Amount, \$100,000.

(Approved by the Secretary of the Interior.)

KNOW ALL MEN BY THESE PRESENTS, That we, _____, of _____, as principal, and _____ and _____, as sureties, are held and firmly bound unto the United States of America in the full and just sum of one hundred thousand dollars, lawful money of the United States, to be paid to the United States; for which payment, well and truly to be made, we bind ourselves and each of us, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Signed with our hands, and sealed with our seals, this _____ day of _____, in the year of our Lord one thousand eight hundred and eighty _____.

The condition of the foregoing obligation is such, that whereas, the President of the United States has appointed the said _____ Public Printer, by commission dated _____, 188—, and said _____ has accepted said appointment; now therefore, if the said _____ shall, at all times, during his holding and remaining in said office, carefully discharge the duties thereof, and faithfully disburse all public moneys, and honestly account, without fraud or delay, for the same and for all public funds and property which shall or may come into his hands, then the above obligation to be void and of no effect; otherwise, to remain in full force and virtue.

_____. [L. S.]
_____. [L. S.]
_____. [L. S.]

Signed, sealed, and delivered in the presence of—

NOTE.—When the Public Printer is appointed during a recess of the Senate he gives bond in the following form:

KNOW ALL MEN BY THESE PRESENTS, That we, _____, as principal, and _____ and _____, as sureties, are held and firmly bound unto the United States of America in the full and just sum of one hundred thousand dollars, lawful money of the United States; to which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this _____ day of _____, in the year of our Lord one thousand eight hundred and eighty _____.

Whereas, the President of the United States hath, pursuant to law, appointed and commissioned the said _____ Public Printer, to have and to hold the said office, with all the privileges and emoluments to the same right appertaining, during the pleasure of the President of the United States for the time being, and until the end of the next session of the Senate of the United States, and no longer, as in and

by a commission under the hands of the said President and the Secretary of State, and the seal of the United States, bearing date the — day of —, in the year of our Lord one thousand eight hundred and eighty —, more fully appears:
Now, therefore, the condition of the foregoing obligation is such, that if the said — shall faithfully perform the duties of said office according to law, then the above obligation to be void and of none effect; otherwise, it shall abide and remain in full force and virtue.

— [L. S.]
— [L. S.]
— [L. S.]

Signed, sealed, and delivered in presence of—
—
—

No. 7.

Requisition for Advance of Money to Public Printer.

OFFICE OF THE PUBLIC PRINTER,
Washington, —, 188—.

To the SECRETARY OF THE TREASURY.

SIR: Please cause a warrant to be issued in favor of the Treasurer of the United States, to be by him placed to my credit and subject to my draft, for the sum of — dollars and — cents, with which I am to be charged and held accountable under the following heads of appropriations.
Very respectfully,

—,
Public Printer.

Vouchers deposited this day, \$—.

—,
Auditor.

FIRST AUDITOR'S OFFICE, —, 188—.

I recommend the advance requested.

—,
Comptroller.

FIRST COMPTROLLER'S OFFICE, —, 188—.

APPROPRIATIONS.

Salaries, office of Public Printer, 188—\$
Contingent expenses, office of Public Printer, 188—
Public printing and binding, 188—
Completing the New General Catalogue of the Library of Congress, 1878.....

—

No. 8.

Official Bond of —, as Disbursing Clerk for the —. (Ante, 627-'8.)
Dated —. Amount, —.

KNOW ALL MEN BY THESE PRESENTS, That we, —, as principal, and — and —, as sureties, are held and firmly bound to the United States of America in the full and just sum of — dollars, lawful money, to be paid to the said United States; for which payment, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators, and each of them, firmly by these presents.

Signed with our hands, and sealed with our seals, and dated this — day of —, in the year of our Lord one thousand eight hundred and eighty —.

The condition of the foregoing obligation is such, that whereas the Secretary of — hath, pursuant to law, constituted and appointed the said — a disbursing clerk for the — Department:

Now, therefore, if the said — shall truly and faithfully execute and discharge all the duties of said office of disbursing clerk for the — Department, according to the laws of the United States, and shall, moreover, truly and faithfully keep safely, and disburse and pay out all sums of public money placed or coming into his hands from time to time, without loaning, using, depositing in banks, or

exchanging for other funds than as allowed by law, and shall do and perform all other duties as disbursing clerk which may be imposed by any act of Congress or by any regulation of the _____ Department made in conformity to law, then this obligation to be void, and of none effect; otherwise, it shall remain and abide in full force and virtue.

_____. [L. S.]
_____. [L. S.]
_____. [L. S.]

Signed, sealed, and delivered in the presence of—
_____.
_____.

—
OFFICE OF THE SOLICITOR OF THE _____,
_____, 188—.

The sum named in, and the sureties to this bond, seem reasonable and safe to me, and are to my satisfaction.

_____,
Solicitor of the _____.

—
No. 9.

Requisition for Advance of Money to Disbursing Clerk.

TREASURY DEPARTMENT, _____, 188—.

To the SECRETARY OF THE TREASURY.

SIR: Please cause a warrant to be issued in favor of _____, disbursing _____ at _____, for the sum of _____ dollars and _____ cents, with which he is to be charged and held accountable under the following heads of appropriations.

Very respectfully,

_____,
_____.

Approved, and submitted to the First Comptroller for his recommendation.

_____,
Chief Clerk.

I recommend the advance requested.

_____,
First Comptroller.

_____, 188—.

APPROPRIATIONS.

No. 10.

Requisition of the Secretary of War for Advance of Money to Disbursing Clerk of War Department.

WAR DEPARTMENT,
Washington, _____, 188—.

To the SECRETARY OF THE TREASURY.

SIR: Please issue a warrant for _____ dollars, in favor of the Treasurer of the United States, to be placed to the credit of _____, disbursing clerk of the War Department, and to be charged to the undermentioned appropriations.

Very respectfully,

_____,
Secretary of War.

APPROPRIATIONS.

_____,
Disbursing Clerk, War Department.

No. 11.

Requisition of the Secretary of War for Advance of Money to Disbursing Clerk of War Department from Contingent-Expenses Appropriations.

WAR DEPARTMENT,
Washington, ———, 188—.

To the SECRETARY OF THE TREASURY.

SIR: Please issue a warrant for ———¹⁰⁰ dollars, in favor of the Treasurer of the United States, to be placed to the credit of ——— ———, disbursing clerk of the War Department, and to be charged to the undermentioned appropriations. .
Very respectfully,

—————,
Secretary of War.

APPROPRIATIONS.

Contingent expenses:	
Office Secretary of War	\$
Office Adjutant-General	
Office Quartermaster-General	
Office Commissary-General	
Office Surgeon-General	
Office Paymaster-General	
Office Chief of Ordnance	
Office Chief of Engineers	
Office Military Justice	
War-Department building	
Building corner Seventeenth and F streets	
Building corner Fifteenth and F streets	
	\$
	—————, <i>Disbursing Clerk, War Department.</i>

No. 12.

Requisition of the Secretary of War for Advance of Money to Disbursing Clerk of War Department from Appropriations for Salaries.

WAR DEPARTMENT,
Washington, ———, 188—.

To the SECRETARY OF THE TREASURY.

SIR: Please issue a warrant for ———¹⁰⁰ dollars, in favor of the Treasurer of the United States, to be placed to the credit of ——— ———, disbursing clerk of the War Department, and to be charged to the undermentioned appropriations.
Very respectfully,

—————,
Secretary of War.

APPROPRIATIONS.

Salaries:	
Office Secretary of War	\$
Office Adjutant-General	
Office Inspector-General	
Office Quartermaster-General	
Office Commissary-General	
Office Surgeon-General	
Office Paymaster-General	
Office Chief of Ordnance	
Office Chief of Engineers	
Office Chief Signal Officer	
Office Military Justice	
War-Department building	
Building corner Seventeenth and F streets	
Building corner Fifteenth and F streets	
Superintendent building corner Fifteenth and G streets	
Superintendent building on Tenth street	
	\$
	—————, <i>Disbursing Clerk, War Department.</i>

No. 13.

Secretary of Treasury's Reference to the Accounting Officers and Register of the Treasury, of Requisitions for Advances of Money.

OFFICE OF THE SECRETARY OF THE TREASURY,
Division of Warrants, Estimates, and Appropriations. }
Form 97.

ADVANCE OF
\$ ———
RECOMMENDED.

TREASURY DEPARTMENT,
Office of the Secretary,
Warrant Division, ———, 188—.

To the FIRST AUDITOR, REGISTER, and FIRST COMPTROLLER.

GENTLEMEN: I have the honor to hand you herewith a requisition for the advance of money to ——— on account of his expenditures, and for which he is to be charged and held accountable.

The AUDITOR will please give the number of the last adjustment, the amount of vouchers received since it was made, and any other information in his possession which will assist the Comptroller in determining the propriety of recommending the advance.

The REGISTER will please give the balance due to or from the United States on the adjustment above referred to, what advances have been allowed since it was made, and any other information in his possession which will assist the Comptroller in determining the propriety of recommending the advance.

The COMPTROLLER will please give the date and the amount of bond and append his recommendation in reference to the advance.

By order of the Secretary:

———,
Chief of Division.

———
FIRST AUDITOR'S OFFICE, ———, 188—.

Report No. ———, dated ———. Vouchers on hand amounting to \$———.

———,
First Auditor.

———
REGISTER'S OFFICE, ———, 188—.

Balance due ——— ———, per above report. Advances since, \$———.

———,
Register.

———
FIRST COMPTROLLER'S OFFICE, ———, 188—.

Bond dated ———, 188—, for \$———. I recommend the advance of \$——— on the within requisition, from the appropriation ———.

———,
First Comptroller.

No. 14.

Bond of Consular Officers who cannot transact other Business. (Ante, 606-'8.)

KNOW ALL MEN BY THESE PRESENTS, That we, ——— ———, principal, and ——— ——— and ——— ———, sureties, the two last named being citizens of the United States residing at ———, State of ———, are held and firmly bound to the United States of America in the sum of ——— thousand dollars, money of the said United States; to the payment whereof we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators.

Witness our hands and seals, this ——— day of ———, 188—.

The condition of the above obligation is such, that if the above bounden ———, appointed ——— of the United States at ———, shall truly and faithfully discharge the duties of his said office according to law, and shall truly and faithfully account for, pay over, and deliver up, all fees, moneys, goods, effects, books, records, papers, and other property which shall come to the hands of the said ———, or to the hands of any person for his use as such ———, under any law now or hereafter enacted, and that he will truly and faithfully perform all other duties now or hereafter lawfully imposed upon him as such ———. And these presents are subject to this other and further condition, that he, the said ———, will not, while he holds the said office, be interested in or transact any business as a merchant,

factor, broker, or other trader, or as a clerk or other agent for any such person, to, from, or within the port, place, or limits of his ———, directly or indirectly, either in his own name or in the name or through the agency of any other person; and in case he, the said ———, shall violate the provisions of this condition, that then the above-named obligors shall be liable to said obligees to a penalty for the breach of such condition in a sum equal to the amount of the annual compensation of said ———, which is hereby stipulated, agreed upon, and admitted by way of liquidated damages; but that this condition shall not impair or prevent the right of the United States to prosecute said ——— for the recovery of said penalty against him, the said ———, individually, the same as if this bond had not been given; and if the said ——— shall conform to all the above conditions, then this obligation to be void; otherwise, to remain in full force.

—————. [L. S.]
 —————. [L. S.]
 —————. [L. S.]

Signed, sealed, and delivered in the presence of—

—————.
 —————.

The following instructions must be particularly observed and complied with:

- 1st. The christian names must be written in the body of the bond in full, and so signed to the bond.
- 2d. A seal to be attached to each signature.
- 3d. Each signature must be made in the presence of two persons, who must sign their names as witnesses.
- 4th. The United States attorney of the district in which the sureties reside, or the member of Congress for the district, or one of the Senators of the State from which he is appointed, must certify that they are sufficient to pay the penalty of the bond, and are citizens of the United States. This requirement being for the benefit of the Secretary of State, he may substitute any other for it in any particular case, in order to enable him to be satisfied of the sufficiency of the sureties.
- 5th. Bond to be dated.

No. 15.

Bond of Consular Officers who may transact Business. (Ante, 606-'8.)

KNOW ALL MEN BY THESE PRESENTS, That we, ———, and ———, and ———, are held and firmly bound to the United States of America in the sum of ——— thousand dollars, money of the said United States; to the payment whereof we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators.

Witness our hands and seals, this ——— day of ———, 188 - .

The condition of the above obligation is such, that if the above-bounden ———, appointed ——— of the United States at ———, shall truly and faithfully discharge the duties of his said office according to law, and shall truly and faithfully account for, pay over, and deliver up, all moneys, goods, effects, books, records, papers, and other property which shall come to the hands of the said ———, or to the hands of any person for his use as such ———, under any law now or hereafter enacted, and that he will faithfully perform all other duties now or hereafter lawfully imposed upon him as such ———, then this obligation to be void; otherwise, to remain in full force.

—————. [L. S.]
 —————. [L. S.]
 —————. [L. S.]

Signed, sealed, and delivered in the presence of—

—————.
 —————.

The following instructions must be particularly observed and complied with:

- 1st. The christian names must be written in the body of the bond in full, and so signed to the bond.
- 2d. A seal to be attached to each signature.
- 3d. Each signature must be made in the presence of two persons, who must sign their names as witnesses.
- 4th. The sureties must be citizens and permanent residents of the United States.
- 5th. The United States attorney of the district in which the sureties reside, or the member of Congress for the District, or one of the Senators of the State from which he is appointed, must certify that they are sufficient to pay the penalty of the bond, and are citizens of the United States. This requirement being for the benefit of the Secretary of State, he may substitute any other for it in any particular case, in order to enable him to be satisfied of the sufficiency of the sureties.
- 6th. Bond to be dated.

No. 16.

Bond of Vice-Consular Officers. (Ante, 606-'8.)

KNOW ALL MEN BY THESE PRESENTS, That we, _____, principal, and _____ and _____, sureties, are held and firmly bound to the United States of America in the sum of _____ thousand dollars, money of the said United States; to the payment whereof we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators.

Witness our hands and seals, this _____ day of _____, 188—.

The condition of the above obligation is such, that if the above-bounden _____, appointed _____ of the United States at _____, shall truly and faithfully discharge the duties of his said office according to law, and shall truly and faithfully account for, pay over, and deliver up, all moneys, goods, effects, books, records, papers, and other property which shall come into the hands of the said _____, or to the hands of any person for his use as such _____, under any law now or hereafter enacted, and that he will faithfully perform all other duties now or hereafter lawfully imposed upon him as such _____, then this obligation to be void; otherwise, to remain in full force.

_____. [SEAL.]
 _____. [SEAL.]
 _____. [SEAL.]

Signed, sealed, and delivered in the presence of—

_____.
 _____.

The following instructions must be particularly observed and complied with:

- 1st. The christian names must be written in the body of the bond in full, and so signed to the bond.
- 2d. A seal to be attached to each signature.
- 3d. Each signature must be made in the presence of two persons, who must sign their names as witnesses.
- 4th. The United States attorney of the district in which the sureties reside must certify that they are sufficient to pay the penalty of the bond, and are citizens of the United States. If, however, the sureties are not citizens of the United States, their sufficiency to pay the penalty of the bond should be certified by the consul.
- 5th. Bond to be dated.

I, _____, hereby certify that _____ and _____, the sureties named in the within bond, are severally sufficient to pay the penalty thereof, and that they are residents of _____.

Dated at _____, 188—.

No. 17.

\$_____.

Consular Bill of Exchange.

No. _____.

CONSULATE, UNITED STATES OF AMERICA,
 AT _____, _____, 188—.

Fifteen days after sight (acceptance waived and indorsements by procuration excepted) of this first of exchange, (second unpaid,) pay to the order of _____, value received, and charge the same to account for salary.

_____,
 Consul.

To the SECRETARY OF THE TREASURY, *Washington, D. C.*

No. 18.

First Comptroller's Requisition for Advance of Money from the Consular and Diplomatic Appropriations.

FIRST COMPTROLLER'S OFFICE, } DIPLOMATIC.
 Form 11.

TO THE SECRETARY OF THE TREASURY.

No. _____.

TREASURY DEPARTMENT,
First Comptroller's Office, Washington, _____, 188—.

SIR: Please cause a warrant for _____ dollars (\$_____) _____ to issue in favor of _____, the present holders of the annexed bill of exchange of _____ United

States Consul _____ at _____, dated _____, 188—, payable out of the following appropriation:

APPROPRIATIONS.	Dolls.	Cts.
Salaries United States consuls	188—,
Salaries of interpreters in China and Japan	188—,
Salaries of interpreters, guards, and other expenses in Turkish Dominions	188—,
Salaries of marshals of consular courts in Japan, China, Siam, and Turkey	188—,
Rent of prisons in Siam and Turkey, and wages of keepers of the same	188—,
Rent of prisons in China	188—,
Wages of keepers, care of offenders, and expenses, (in China)	188—,
Rent of prisons in Japan	188—,
Wages of keepers, care of offenders, and expenses, (in Japan)	188—,
Consular officers not citizens of United States	188—,

the said _____ is to be charged accordingly on the books of the Treasury.
§_____,
First Comptroller.

No. 19.

Warrant of the Secretary of the Treasury for payment of Balance due Consular Officer on Settlement of his Account.

OFFICE OF THE SECRETARY OF THE TREASURY,
Division of Warrants, Estimates, and Appropriations. }
Form 36.

DIPLOMATIC. TREASURY DEPARTMENT.

[Vignette.] To the TREASURER OF THE UNITED STATES, greeting :
SETTLEMENT WARRANT. Pay to _____, United States Consul at _____, or order, to be charged to the appropriations named in the margin, _____. Due on settlement of his salary account, with which he is _____ to be charged, for the _____ quarter of 18—, _____, pursuant to a certificate of the First Comptroller, No. —, dated the — day of _____, 18—, recorded by the Register. For so doing this shall be your warrant.

APPROPRIATIONS.
Allowance for consular clerks.....\$
Salaries consular service.....
Contingent expenses of consulates
Relief and protection of American seamen...
Contingent expenses of foreign missions.....
See certificate attached to warrant No. —..

Given under my hand and the seal of the Treasury Department this — day of _____, in the year of our Lord one thousand eight hundred and eighty —, and of Independence the one hundred and _____.
_____,
Assistant Secretary.
Countersigned, and the Treasurer of the United States will receive credit for this warrant upon receipting Miscellaneous Revenues Revenue Counter Warrant No. —, of even date herewith.
_____,
First Comptroller.
Registered : _____,
Register.

No. 20.

Warrant to cover into the Treasury the Revenues derived from Consular Fees.

OFFICE OF THE SECRETARY OF THE TREASURY,
Division of Warrants, Estimates, and Appropriations. }
Form 8.

MISCELLANEOUS REVENUES.

TREASURY DEPARTMENT.

[Vignette.]

REVENUE-COUNTER
WARRANT.

No. —.

— quarter, 18—.

To —, —,
United States Consul at —.

Pay to the Treasurer of the United States, or order,
—, on account of the fees of your office with which
you are to be credited, — received in the —
quarter of 18—, to be credited into the Treasury as
revenues derived from consular fees. Pursuant to cer-
tificate of First Comptroller, No. —, dated the —
day of —, 18—, recorded by the Register. For so
doing this shall be your warrant.

Given under my hand and the seal of
the Treasury Department, this — day
of —, in the year of our Lord one
thousand eight hundred and eighty —,
and of Independence the one hundred
and —.

—,
Assistant Secretary.

Countersigned:

—,
First Comptroller.

Registered:

—,
Register.

OFFICE OF THE
TREASURER OF THE UNITED STATES.

Received —, 18—.

—,
Treasurer.

.....	REVENUE	.....
.....	
.....	

.....	COUNTER.	.....
.....	
.....	

Payment by diplomatic settlement warrant
No. —, of even date herewith

No. 21.

Official Bond of Collectors, Naval Officers, and Surveyors of Customs. (Ante, 601-2.)

KNOW ALL MEN BY THESE PRESENTS, That we, —, —, as principal, and
— and —, as sureties, are held and firmly bound unto the
United States of America in the full and just sum of — thousand dollars, money
of the United States; to which payment, well and truly to be made, we bind our-
selves, jointly and severally, our joint and several heirs, executors, and administra-
tors, firmly by these presents.

Sealed with our seals, and dated this — day of —, in the year one thousand
eight hundred and —.

The condition of the foregoing obligation is such, that whereas the President of
the United States hath, pursuant to law, appointed the said — to the
office of —:

Now, therefore, if the said — has truly and faithfully executed and dis-
charged, and shall continue truly and faithfully to execute and discharge, all the
duties of the said office, according to law, then the above obligation to be void and
of none effect; otherwise, it shall abide and remain in full force and virtue.

— [L. S.]
— [L. S.]
— [L. S.]

Sealed and delivered in presence of—

—
—
—
—

The following instructions must be particularly observed and complied with, viz:

- 1st. The christian names must be written in the body of the bond in full, and so signed to the bond.
- 2d. A seal of wax or wafer to be attached to each signature.
- 3d. Each signature must be made in the presence of two persons, who must sign their names as witnesses.
- 4th. Each surety must make and sign an affidavit of the amount he is worth after paying his just debts.
- 5th. A district judge or attorney of the United States, or the clerk of a court of record, under the seal and designation of the court, county, and State, must certify that the sureties are sufficient to pay the penalty of the bond.
- 6th. The affidavits of the sureties must be taken and signed before an officer authorized to administer oaths generally. The officer must certify that he administered the oaths. If the *magistrate* is not a judge of the United States court, his authority to administer oaths must be certified by the clerk of a court of record having official knowledge of that fact.
- 7th. A collector must be sworn in the collection district to which he is appointed. The oath of office must be administered to a collector by a magistrate authorized to administer oaths generally. The authority to be certified as directed under the 6th item.
- 8th. The oath to a naval officer, surveyor, inspector, and to any other officer of the customs, (except collector,) must be administered by the collector in his district. (See act of March 2, 1799, section 20.)
- 9th. Bond to be dated.
- 10th. Bond and official oath should be of the same date.
- 11th. No surety can hold office under his principal.
- 12th. Sureties must certify in all to at least twice the penalty of the bond.
- 13th. Residence and occupation of sureties must be stated.
- 14th. The penalties of the bonds on which he is liable, or a statement that he is not so liable, must appear in each surety's affidavit.

No. 22.

Form of Affidavit for Sureties on Official Bond.

STATE OF _____,
County of _____, } ss:

Personally appeared _____, who, being duly sworn, says that he is one of the sureties mentioned in the official bond of _____, dated _____, 188—; that he is a householder in _____, State of _____; that he is by occupation a _____, for _____ months last past doing business at _____, in _____, and residing at _____, in _____; that he is now worth the sum of \$_____ over and above all debts and liabilities which he owes or has incurred, exclusive of property exempt from execution; that he owns personal property worth \$_____, consisting of (1) _____, and real estate worth \$_____, described as follows: (2)_____.

(Signed) _____.

Sworn to and subscribed before me, this _____ }
day of _____, A. D. 188—.

(1.) Here describe the property by name, so that it can be identified, as "Fifteen shares of the stock of the Ocean Bank of New York City."

(2.) Here describe the property, by giving the number of the lot and square, if in a city, or by metes and bounds, if in the country, that it may be identified.

No. 23.

Official Bond of Collector of Internal Revenue. (Ante, 602.)

* * * The condition of the foregoing obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said _____, Collector of Internal Revenue for the _____ district of _____, under an act entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," and in due form of law caused to be issued to him, as such, a commission bearing date the _____ day of _____, anno Domini one thousand eight hundred and _____: Now, therefore, if the said _____ shall truly and faithfully execute and discharge all the duties of the said office according to law, and shall justly and faithfully account for and pay over to the United States, in compliance with the orders and regulations of the Secretary of the Treasury, all public moneys which may come into his hands or possession, and if each and every deputy collector appointed by said collector shall truly and faithfully execute and discharge all the duties of such deputy collector according to law, then the above obligation to be void and of no effect; otherwise, it shall abide and remain in full force and virtue. * * *

No. 24.

Bond of Collector of Internal Revenue as Disbursing Agent. (Ante, 602.)

KNOW ALL MEN BY THESE PRESENTS, That we, ———, Collector of the ——— collection district of the State of ———, as principal, and ———, of the County of ———, in the State of ———, as his sureties, * * *

The condition of the above obligation is such, that whereas section 3144 of the Revised Statutes of the United States as amended by act of Congress approved March 1, 1879, makes it the duty of the said ———, Collector as aforesaid, to act as disbursing agent for the payment of all expenses of collection of taxes and other expenditures for the Internal-Revenue service within his collection district under regulations and instructions from the Secretary of the Treasury:

Now, therefore, if the said ———, collector as aforesaid, shall faithfully perform his duties as such disbursing agent, and shall properly account for and pay over all moneys that may come into his hands as such disbursing agent; and if each and every deputy collector appointed by said collector, upon whom the duties of collector and disbursing agent may devolve, as provided by section 3149 of the Revised Statutes of the United States as amended by act of Congress approved March 1, 1879, shall faithfully discharge his duties as acting disbursing agent, and shall properly account for and pay over all moneys that may come into his hands as such acting disbursing agent, then this obligation shall be null and void; otherwise, of full force and effect in law. * * *

No. 25.

Bond of Internal-Revenue Gauger, Storekeeper, Inspector, &c. (Ante, 603.)

(Section 3156, U. S. Revised Statutes.)

[Bond in the same form is given by Inspectors of Tobacco and Cigars, Internal-Revenue Storekeepers, Internal-Revenue Gaugers, and Internal-Revenue Storekeepers and Gaugers.]

* * * Whereas the said ——— has been appointed ——— Internal-Revenue Gauger [or, Storekeeper, &c.] ——— for the ——— collection district of the State of ———: Now, therefore, the condition of the foregoing obligation is such, that if the said ——— shall faithfully discharge the duties assigned to him by law or regulations as such Internal-Revenue Gauger, [or, Storekeeper, &c.] then this obligation to be void and of no effect; otherwise, it shall abide and remain in full force and virtue. * * *

No. 26.

Bond of Internal-Revenue Stamp-Agent. (Ante, 604.)

* * * The condition of the foregoing obligation is such, That whereas the said ——— has been, pursuant to law, appointed ———; And whereas, under the provisions of section 3427 of the Revised Statutes of the United States, the Commissioner of Internal Revenue is authorized, in any collection district where, in his judgment, the facilities for the procurement and distribution of stamped paper and adhesive stamps are insufficient to supply the collectors, assistant treasurers of the United States, designated depositaries, or postmasters, without prepayment therefor, suitable quantities of such stamped paper and adhesive stamps; And whereas adhesive stamps have been delivered, or hereafter may be delivered, to said ———, by virtue of said authority:

Now, therefore, if the said ——— shall make a faithful return, whenever so required, of the moneys received by him for such adhesive stamps as have been, or may hereafter be delivered to him, and of all quantities or amounts thereof undisposed of whenever required so to do, and shall make monthly payments for all quantities and amounts sold, or not remaining on hand, and shall do and perform all other acts of him required to be done in the premises, according to law, then the above obligation to be void and of no effect; otherwise, to be and remain in full force and virtue. * * *

No. 27.

Official Bond of Superintendent of United States Mint. (Ante, 600-1.)

[The form is the same for the bonds of Assayers, Melters and Refiners, and Coiners.]

* * * The condition of the foregoing obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said ——— as

Superintendent of the Mint of the United States at ———, and in due form of law caused to be issued to him, as such, a commission bearing date the — day of ——— 188—:

Now, therefore, if the said ——— shall faithfully and diligently perform, execute, and discharge all and singular the duties of said office according to the laws of the United States, then this obligation to be void and of no effect; otherwise, to be and remain in full force and virtue. * * *

No. 28.

Official Bond of Cashier of United States Mint. (Ante, 600-'1.)

[The form for the chief clerk's bond is the same.]

* * * The condition of the foregoing obligation is such, that whereas the above-bounden ——— has been appointed to the position of Cashier in the Mint of the United States at ———:

Now, therefore, the condition of the above obligation is such, that if the said ——— shall well and truly perform and faithfully and diligently execute the duties of his trust according to law and according to the requirements of any law to be hereafter enacted, then the above obligation to be void; otherwise, to remain in full force and effect. * * *

No. 29.

Official Bond of Supervising Inspector of Steam-Vessels. (Ante, 604-'5.)

(Section 4459, Revised Statutes U. S.)

* * * The condition of the foregoing obligation is such, that whereas the said ——— has been duly appointed by the President of the United States, in conformity with the provisions of section 4404, Revised Statutes, Supervising Inspector of Steam-Vessels for the ——— district:

Now, therefore, if the said ——— shall truly and faithfully execute and discharge all the duties of the said office according to law, and shall pay, in the manner provided by law, all moneys that may be received by him, then the above obligation to be void and of none effect; otherwise, it shall abide and remain in full force and virtue. * * *

No. 30.

Official Bond of Local Steamboat Inspector. (Ante, 604-'5.)

(Section 4459, Revised Statutes U. S.)

* * * The condition of the foregoing obligation is such, that whereas the said ——— has been duly designated, in conformity with the provisions of section 4415, Revised Statutes, an Inspector of ——— for the district of ———, which designation has been approved by the Secretary of the Treasury:

Now, therefore, if the said ——— shall truly and faithfully execute and discharge all the duties of the said office according to law, and shall pay, in the manner provided by law, all moneys that may be received by him, then the above obligation to be void and of none effect; otherwise, it shall abide and remain in full force and virtue. * * *

No. 31.

Official Bond of Officers in Quartermaster's Department, U. S. Army. (Ante, 610-'1.)

* * * The condition of this obligation is such, that whereas the above-bounden ——— has been appointed ——— and has accepted said appointment: Now, if the said ——— shall, and do at all times henceforth and during his holding and remaining in said office, carefully discharge the duties thereof, and faithfully expend all public money, and honestly account for the same, and for all public property which shall or may come into his hands, in said capacity of ——— without fraud or delay, then the above obligation to be void; otherwise, to remain in full force and virtue. * * *

No. 32.

Estimate of Army Funds Required.

ESTIMATE OF FUNDS required for the service of the Quartermaster's Department at _____, by _____, in the month of _____, 188—.

--	--	--	--

RECAPITULATION.

	Amount of estimate.		Outstanding debts as per accompanying list.		Total.		Deduct actual or probable balance on hand.		Amount required.	
	Dolls.	Cts.	Dolls.	Cts.	Dolls.	Cts.	Dolls.	Cts.	Dolls.	Cts.
Regular supplies										
Incidental expenses										
Cavalry and artillery horses.										
Barracks and quarters.....										
Transportat'n of the Army.										
Clothing and equipage.....										
Stoves.....										
National cemeteries										
Total.....										

Station: _____.

Date: _____.

_____,
Quartermaster

Approved: _____, Commanding.

When this is a post estimate it should be in triplicate: one copy to be retained at the post, and two sent to the officer who advances the funds. Otherwise in duplicate: one copy to be retained, one sent to the Quartermaster-General.

NOTE.—When officers do not require funds on account of any of the general heads of appropriations, or items specified under said heads, they will omit such headings or items from the estimates transmitted to this office.

If funds are required for items not specified in the form referred to, such items will be set forth in detail, and under proper heads of appropriations.

In cases of transfer of funds by one officer to another on estimates, these estimates should be filed with the receipts.

No. 33.

Request of Quartermaster-General, based on Estimate of Army Funds required.

WAR DEPARTMENT.

\$_____.

OFFICE OF THE QUARTERMASTER GENERAL,
Washington City, _____, 188—.

No. _____.

To the SECRETARY OF WAR.

SIR: Please cause the sum of _____ dollars to be placed in the following-named depositories, viz:

_____	\$

Total.....	\$

to the credit of _____, who is to be held accountable therefor, and charged to the appropriations for—

Regular supplies, Quartermaster's Dept., for fiscal year ending June 30, 188—	\$
Incidental expenses, Quartermaster's Dept.,	188—
Barracks and quarters.....	188—
Transportation of the Army and its supplies	188—
Horses for cavalry and artillery.....	188—
Clothing, camp and garrison equipage....	188—
Construction and repairs of hospitals.....	188—
National cemeteries.....	188—
Pay of supts. of national cemeteries.....	188—
Total.....	\$

Respectfully,

_____,
Quartermaster-General,
Brevet Major-General, U. S. Army.

Officer's bond dated _____, 188—.

No. 34.

Settlement Requisition of the Secretary of War on the Secretary of the Treasury.

WAR DEPARTMENT.

SETTLEMENT

To the SECRETARY OF THE TREASURY.

REQUISITION.

SIR: Please to cause a warrant for _____ dollars and _____ cents to be issued in favor of _____, due on settlement, as per certificate of Second Comptroller, No. _____. To be charged to the under-mentioned appropriations.

No._____.

Given under my hand this _____ day of _____, 188—.

_____,
Secretary of War.

Countersigned:

_____,
Second Comptroller.

Registered:

_____,
Auditor.

APPROPRIATIONS.

Regular supplies of the Quartermaster's department.....	\$
Incidental expenses of the Quartermaster's department.....	
Horses for cavalry and artillery.....	
Barracks and quarters.....	
Transportation of the Army and its supplies.....	
Horses and other property lost in the military service.....	
Subsistence of the Army.....	
Medical and Hospital department.....	

No. 35.

Accountable Requisition of the Secretary of War on the Secretary of the Treasury, on account of Army Pay, Mileage, &c.

WAR DEPARTMENT.

ACCOUNTABLE To the SECRETARY OF THE TREASURY.
REQUISITION. SIR: Please to cause a warrant for _____ dollars and _____ cents to be issued in favor of _____, to go to the credit of _____ No. _____. _____, for which sum he is to be held accountable. Bond dated _____, 18____. To be charged to the undermentioned appropriations.
Given under my hand this _____ day of _____, 188____.
\$_____.
_____,
Secretary of War.

Countersigned: _____,
Second Comptroller.
Registered: _____,
Second Auditor.

APPROPRIATIONS.

Pay of the Army.....\$
Mileage.....
General expenses.....
Funds required for use on or before _____, 188____.

No. 36.

Accountable Requisition of the Secretary of War on the Secretary of the Treasury, on account of Army Pay, Ordnance, Militia, Medical and Hospital Department, &c.

WAR DEPARTMENT.

ACCOUNTABLE To the SECRETARY OF THE TREASURY.
REQUISITION. SIR: Please to cause a warrant for _____ dollars and _____ cents to be issued in favor of _____, for which sum he is to be held accountable. Bond dated _____, 188____. To be charged to the undermentioned appropriations.
Given under my hand this _____ day of _____, 188____.
\$_____.
_____,
Secretary of War.

Countersigned: _____,
Second Comptroller.
Registered: _____,
Second Auditor.

APPROPRIATIONS.

Pay, &c., of the Army.....\$
Ordnance, ordnance stores and supplies.....
Ordnance Service.....
Repairs of arsenals.....
Arming and equipping the militia.....
Ordnance material, (proceeds of sale).....
Armament of fortifications.....
Expenses of recruiting.....
Medical and Hospital department.....
Funds required for use on or before _____, 188____.

No. 37.

Accountable Requisition of the Secretary of War on the Secretary of the Treasury, on account of Miscellaneous Purposes.

WAR DEPARTMENT.

ACCOUNTABLE To the SECRETARY OF THE TREASURY.

REQUISITION. SIR: Please to cause a warrant for _____ dollars and _____ cents to be issued in favor of _____, for which sum he is to be held
No. _____. accountable. To be charged to the undermentioned appropriations.

Given under my hand this _____ day of _____, 188____.
\$_____.

_____,
Secretary of War.

Countersigned:

_____,
Second Comptroller.

Registered:

_____,
Auditor.

APPROPRIATIONS.

_____ \$

No. 38.

Official Bond of Officers of Subsistence and Quartermaster's Department. (Ante, 610-'1.)

(Section 1191, Revised Statutes.)

* * * The condition of this obligation is such, that whereas the above-bounden _____ has been appointed a _____ with the rank of _____, and has accepted said appointment: Now, if the said _____ shall and doth at all times, henceforth and during his holding and remaining in said office, carefully discharge the duties thereof, and faithfully expend all public money, and honestly account for the same, and for all public property which shall or may come into his hands, on account of Subsistence and Quartermaster's Department, without fraud or delay, then the above obligation to be void; otherwise, to remain in full force and virtue. * * *

No. 41.

Official Bond of Ordnance Storekeeper. (Ante, 611.)

* * * Whereas the above-bounden ——— is by appointment an Ordnance Storekeeper in the Ordnance Department of the Army of the United States, with the rank of ———: Now, therefore, the condition of the above obligation is such, that if the said ———, shall on and from the date hereof well and truly account to the proper officers of the War and Treasury Departments for all public funds and property of whatsoever kind which are now in his hands, or which may hereafter come into his hands as Ordnance Storekeeper during the four years succeeding the date hereof, and until the execution of a new bond, and shall well and faithfully pay over all such sums of money and turn over all public property at any time remaining in his hands when ordered to do so by the proper officers of the War and Treasury Departments, or either of them, and shall faithfully perform all duty incumbent on him in virtue of his office, as required by law and regulations, then this obligation to be null and void; otherwise, to be and remain in full force and virtue.

I certify that I have made due and diligent personal inquiry as to the ability of the sureties in this bond, and am satisfied that they are good and sufficient and fully responsible for the amounts stated by them in their affidavits.

Judge of the ——— Court of the United States
for the ——— Circuit and ——— District of ———.

NOTE.—The certificate to the ability of the sureties must be signed by a Judge of either the Supreme Court of the United States, or a Circuit or District Court of the United States.

No. 42.

Request for Advance to Ordnance Officer.

ORDNANCE DEPARTMENT, }
U. S. A.

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, ———, 188—.

To the SECRETARY OF WAR.

SIR: I have the honor to request that the sum of ———¹⁰⁰⁰ dollars be placed to the credit of ———, for which he is to be held accountable under his bond dated ———, 18—, to be charged as follows, viz:

TO THE APPROPRIATION FOR—

Ordnance, ordnance stores, &c., 188—\$
Ordnance service, 188—	.....
Arming and equipping the militia	.....
Manufacture of arms at the National Armory, 188—	.....

Very respectfully, your obedient servant,

———,
Brig.-Gen'l, Chief of Ordnance.

No. 43.

Request for Payment of Balance of Account to Ordnance Officer.

ORDNANCE DEPARTMENT, }
U. S. A.

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, ———, 188—.

To the SECRETARY OF WAR.

SIR: I have the honor to request that the sum of ———¹⁰⁰⁰ dollars be remitted to ———, being due ———, as per certificate of Second Comptroller, No. ———, to be charged as follows, viz:

TO THE APPROPRIATION FOR—

Ordnance, ordnance stores, &c., 188—\$
Arming and equipping the militia	.....
Armament of fortifications, 188—	.....
Ordnance material, (proceeds of sales)	.....

Very respectfully, your obedient servant,

———,
Brig.-Gen., Chief of Ordnance.

No. 44.

Notice of Requisition for Advance to Ordnance Officer.

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, D. C., ———, 188—.

SIR: The sum of \$——, on account of the following appropriations, has this day been requested to be placed to the credit of ———, ———.

Respectfully, your obedient servant,

—————,
Chief of Ordnance.

The COMMANDING OFFICER,
—————, ———.

No. 45.

Notice of Balance Due to Ordnance Officer.

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, ———, 188—.

—————, ———:

The account of ———, received here on the ———, has been adjusted for the sum of \$——, and notice will be given you from the Treasury of the United States when the Treasurer is prepared to pay the same.

Respectfully, your obedient servant,

—————,
Brig.-Gen., Chief of Ordnance.

No. 46.

Official Bond of Chief Medical Purveyor United States Army. (Ante, 611-'2.)

* * * The condition of this obligation is such, that whereas the above-bounden ——— has been appointed Chief Medical Purveyor United States Army, and has accepted said appointment: Now, if the said ——— shall, and do at all times henceforth and during his holding and remaining in said office, carefully discharge the duties thereof, and faithfully expend all public money, and honestly account for the same, and for all public property which shall or may come into his hands in said capacity of ———, without fraud or delay, then the above obligation to be void; otherwise, to remain in full force and virtue. * * *

No. 47.

Official Bond of Assistant Medical Purveyor United States Army. (Ante, 611-'2.)

* * * The condition of this obligation is such, that whereas the above-bounden ——— has been appointed Assistant Medical Purveyor ———, and has accepted said appointment: Now, if the said ——— shall, and do at all times henceforth and during his holding and remaining in said office, carefully discharge the duties thereof, and faithfully expend all public money, and honestly account for the same, and for all public property which shall or may come into his hands in said capacity of ———, without fraud or delay, then the above obligation to be void; otherwise, to remain in full force and virtue. * * *

No. 48.

Medical Purveyor's Report of Funds on Deposit, &c.

OFFICE OF THE ——— MEDICAL PURVEYOR,
————, 188—.

SIR: I have the honor to report my balance of public funds on deposit and in hand at the close of the week ending Saturday, ———, 188—, as follows:

Deposited with the Assistant Treasurer U. S. at
\$
—————
—————

Total amount\$
=====

Very respectfully, your obedient servant,
—————
Medical Purveyor U. S. Army.

No. 49.

Surgeon-General's Request for Advance to Medical Purveyor U. S. Army.

WAR DEPARTMENT.

\$———. No. ———.
SURGEON-GENERAL'S OFFICE,
————, 188—.

To the SECRETARY OF WAR.

SIR: Please to cause the sum of ——— dollars to be remitted to ——— ———, ———, for which ——— ——— is to be held accountable; to be charged as follows, viz:

TO THE APPROPRIATION FOR—	Dollars.	Cts.	On hand ————, 188—.	
			Dollars.	Cts.



Respectfully,
—————
Surgeon-General U. S. Army.

No. 50.

Official Bond of Paymaster U. S. Army. (Ante, 612.)

KNOW ALL PERSONS BY THESE PRESENTS, That we, ——— ———, ——— ———, and ——— ——— are holden, and stand firmly bound and obliged unto the United States of North America,* for their certain attorney, in the penal sum of ——— thousand dollars, current money of the said United States, well and truly to be paid into their treasury; for which payment, faithfully to be made and done, we, the said ——— ———, ——— ———, and ——— ——— do bind ourselves and each of us, our heirs, executors, and administrators, and each and every of them, for and in the whole, jointly, severally, and firmly by these presents. This obligation to be and continue valid and operative until a new bond shall be filed by the obligor and ap-

* NOTE BY THE FIRST COMPTROLLER.—See the case of The United States vs. Bradley, 10 Peters, 343, 365, in regard to the misnomer in this form.

proved by the Secretary of War, pursuant to the provisions of section 1192 of the Revised Statutes. Signed with our hands, and sealed with our seals, this — day of —, in the year one thousand eight hundred and —:

The condition, however, of this obligation is such, that whereas the above-bounden — has been appointed a Paymaster in the Army of the United States aforesaid: Now, if the said — shall well and truly execute and faithfully discharge, according to law, and to instructions received by him from proper authority, his duties as paymaster aforesaid; and he, his heirs, executors, or administrators, shall regularly account, when thereunto required, for all moneys received by him from time to time, as paymaster aforesaid, with such person or persons as shall be duly authorized and qualified on the part of the said United States for that purpose, and also refund at any time, when thereunto required, any public moneys remaining in his hands unaccounted for, then this obligation shall be null, void, and of no effect: otherwise, to remain and be in full force and virtue. * * *

Approved:

_____,
Secretary of War.

WAR DEPARTMENT, —, 188—.

No. 51.

Army Paymaster's Estimate of Moneys required in his Department.

ESTIMATE OF FUNDS required for the payment of the troops of the United States in the Department of —, of which — is Chief Paymaster, from the 1st day of —, 188—, to the 1st day of —, 188—.

Description and enumeration of troops.	Commencement and expiration.		Pay.	Mileage.	General expenses.	Amount.
	From—	To—				
Aggregate amount ...						
Deduct balance on hand						
Amount required.....						

I certify that the above estimate is founded on the best data, as to the actual number of troops, to be obtained.

Paymaster United States Army, in charge of the Department of —.

N. B.—This estimate should show the amount required under each appropriation.

No. 52.

Paymaster-General's Request for Advance to Paymaster U. S. Army, on account of Miscellaneous Purposes.

WAR DEPARTMENT.

_____.
OFFICE OF THE PAYMASTER-GENERAL,
_____, 188—.

To the SECRETARY OF WAR.

SIR: Please to cause the sum of — dollars to be remitted to Major —, Paymaster United States Army, at —, on account of —, for which the said

_____ is to be held accountable; to be charged, under official bond dated _____, 188—, as follows, viz:

TO THE APPROPRIATION FOR—

_____ \$

Total \$

Respectfully,

_____,
Paymaster-General U. S. A.

No. 53.

Paymaster-General's Request for Advance to Paymaster U. S. Army, on account of Payment of Troops.

WAR DEPARTMENT.

\$—.

No. —.

OFFICE OF THE PAYMASTER-GENERAL,

_____, 188—.

To the SECRETARY OF WAR.

SIR: Please to cause the sum of _____ dollars to be deposited on or before _____, 188—, with the _____ at _____, to the credit of _____, Paymaster United States Army, at _____, on account of payment of troops, for which the said _____ is to be held accountable; to be charged under official bond dated _____, 188—, as follows, viz:

TO THE APPROPRIATION FOR—

Pay, &c., of the Army, 188— \$

Total \$

Respectfully,

_____,
Paymaster-General U. S. A.

No. 54.

Paymaster-General's Request for Payment of Balance due on Adjusted Account for Pay of the Army.

WAR DEPARTMENT.

\$—.

No. —.

OFFICE OF THE PAYMASTER-GENERAL,

Washington City, _____, 188—.

To the SECRETARY OF WAR.

SIR: Please to cause a requisition for the sum of _____ dollars to be issued in favor of _____, as per annexed statement of the Second Comptroller and Second Auditor, No. —, to be charged as follows, viz:

TO THE APPROPRIATION FOR—

Pay of the Army \$

Amount \$

Respectfully,

_____,
Paymaster-General, U. S. A.

No. 55.

Chief Signal Officer's Request for Advance to the Disbursing Officer of the Signal Service.
(*Ante*, 613.)

WAR DEPARTMENT.

§———. No. ——.
OFFICE OF THE CHIEF SIGNAL OFFICER,
Washington, D. C., ——, 188—.

To the SECRETARY OF WAR.

SIR: Please to cause the sum of —— dollars and —— cents to be placed to the credit of ——, for which sum he is to be held accountable. To be charged to the undermentioned appropriations:

TITLE OF APPROPRIATION.

Observations and reports of storms for the fiscal year ending June 30, 188—...\$
For construction, maintenance, and repair of military-telegraph lines for the
fiscal year ending June 30, 188—.....
Signal service for the fiscal year ending June 30, 188—.....
Very respectfully, your obedient servant,

Brigadier-General, Chief Signal Officer, U. S. A.

No. 56.

Official Bond of Paymaster in the Navy. (*Ante*, 615-'6.)

* * * The condition of the above obligation is such, that if the above-bound
—— shall faithfully discharge all his duties as —— in the Navy of the
United States, then the above obligation to be void and of no effect; otherwise to be
and remain in full force and virtue. * * *

No. 57.

Official Bond of Passed Assistant and of Assistant Paymasters in the Navy. (*Ante*, 615-'6.)

* * * The condition of the above obligation is such, that if the above-bound
—— shall faithfully discharge all his duties as —— in the Navy of the
United States, until, upon his promotion to the office of ——, he shall have given
satisfactory bond to the United States for the performance of his duties as ——,
or until, by death, removal, dismissal, or resignation made and accepted, he shall
cease to be ——, then the above obligation to be void and of no effect; otherwise,
to be and remain in full force and virtue. * * *

No. 58.

Navy Pay Officer's Estimate of Funds Required and Receipt for Money.

MONEY REQUISITION.

NAVY DEPARTMENT,
Bureau of Provisions and Clothing, }
Pay-officer's Form No. 17.

U. S. SHIP ——, —— RATE,
——, 188—.

SIR: There is required, for disbursement in the Pay Department of this vessel, the
sum of —— ¹⁰⁰ dollars, in ——, under the following head of appropriation, viz:

Pay of the Navy\$
Total disbursements for preceding month amounted to.....

Balance now on hand is—
In coin, \$——; in currency, \$——; total, \$——.
Very respectfully, your obedient servant,

To ——, Pay—— U. S. Navy.
Approved: _____ Approved: _____
—— U. S. Navy, Commanding Officer. —— U. S. Navy, Commander-in-Chief.

I hereby acknowledge to have received from _____, Pay_____ U. S. Navy, upon the above requisition, the sum of _____ ¹⁰⁰dollars in _____, under the appropriation for Pay of the Navy, for which I hold myself accountable to the United States Navy Department, and have signed _____ receipts.

§

Pay _____, U. S. Navy.

INSTRUCTIONS.—For the convenience of the accounting officers of the Treasury, all money drawn by pay officers of sea-going ships should be required by them under the appropriation for Pay of the Navy, unless otherwise especially directed; and in transferring funds to each other, pay officers should be careful to transfer and to keep the different amounts under the same appropriation and fiscal year to which they properly belong.

Pay officers should always be careful to indorse, both on the face and back of each copy of a money requisition, the word "original," "duplicate," &c., as the case may be, and the receipt should in no case be signed until the money is in hand.

No. 59.

Requisition of the Secretary of the Navy for Advance to Paymaster.

NAVY DEPARTMENT.

No. _____.

To the SECRETARY OF THE TREASURY.

SIR: Please to cause a warrant for _____ dollars and _____ cents to be issued in favor of _____, to be charged to the undermentioned appropriations.

Given under my hand this _____ day of _____, 188—.

§

Secretary of the Navy.

Countersigned:

_____,
Second Comptroller.

Registered:

_____,
Fourth Auditor.

APPROPRIATIONS.

§

§

No. 60.

Requisition of the Secretary of the Navy for Advance to Paymaster of Shore Service.

NAVY DEPARTMENT.

No. _____.

To the SECRETARY OF THE TREASURY.

SIR: Please to cause a warrant for _____ dollars and _____ cents to be issued in favor of Pay_____ _____, United States Navy, with which he will be charged.

SHORE SERVICE.

To be charged to the undermentioned appropriations.

Given under my hand this — day of —, 188—.

\$

_____,
Secretary of the Navy.

Countersigned:

_____,
Second Comptroller.

Registered:

_____,
Fourth Auditor.

APPROPRIATIONS.

_____ \$

_____ \$

No. 61.

Official Bond of Special Fiscal Agents to Disburse Money at Foreign Stations for the Navy Department. (Ante, 616.)

* * * Whereas the Congress of the United States of America, by an act approved on the seventeenth day of June, one thousand eight hundred and forty-four, entitled "An act making appropriations for the Naval service for the fiscal year ending on the thirtieth day of June, eighteen hundred and forty-five," did enact "that no person shall be employed or continued abroad to receive and pay money for the use of the Naval service on foreign stations, whether under contract or otherwise, or to perform the duties usually performed by Navy agents, who has not been, or shall not be, appointed by and with the advice and consent of the Senate;" and, whereas, the President of the United States, by and with the advice and consent of the Senate aforesaid, has appointed the mercantile firm of _____ to be special fiscal agents for London, England.

Sealed with our seals, and dated this — day of —, anno Domini one thousand eight hundred and —.

Now, the condition of this obligation is such, that, whereas, the said _____ have been appointed as aforesaid special fiscal agents of said Department, and have been charged to accept and pay drafts drawn abroad upon them by the Department, or on its account by its officers or other persons duly authorized for that purpose, upon the following agreement, terms, and conditions (which have been duly accepted and entered into by the said _____), that is to say: That the said firm will, while they continue such agents of the said Department, accept, protect, and pay all bills and drafts drawn upon them by the Department, or on its account by its officers or other persons duly authorized for that purpose, and properly presented or coming to them for acceptance, protection, or payment, charging therefor commissions of not more than one per centum, and will allow and credit to the Department interest at the rate of four per centum per annum for all moneys and balances of the Department in their hands, so long as the same shall remain in their hands, and until the same shall be used in the payment by the said firm of such bills and drafts as aforesaid, and will promptly account for and pay over to the said Department, when required so to do, all moneys and balances of said Department at any time remaining in their hands. The said Navy Department on its part agreeing to furnish the money to the said firm for the payment of said bills and drafts, from time to time, as the same may be required, and to allow to the said firm interest at the rate of five per centum on all accounts for which the said firm are at any time in advance to said Department by reason of the payments made on its behalf as aforesaid so long and to the extent that they remain so in advance. Now, if the above-bound _____ shall faithfully and fully discharge all their duties as such fiscal agents as aforesaid, and all the said agreements, terms, and conditions, and shall faithfully and fully, whenever called upon so to do, account for and pay over to the said Department all moneys and balances of said Department being or remaining in their hands, then this obligation to be void; otherwise, to remain in full force and virtue. * * *

No. 62.

Official Bond of Commissioner of Patents. (Ante, 617.)

* * * The condition of the foregoing obligation is such, that whereas the President of the United States hath appointed the said _____ to be Commissioner of Patents, by and with the advice and consent of the Senate. [In the form of bond of chief clerk of Patent Office, read as follows: Whereas the Secretary of the Interior hath appointed the said _____ to be chief clerk of the Patent Office.] Now, if the said _____ shall, at all times, truly and faithfully discharge the the duties of said office according to law, then the above obligation to be void and of no effect; otherwise, to remain in full force and virtue. * * *

No. 63.

Official Bond of Pension Agent. (Ante, 617.)

* * * The condition of the foregoing obligation is such, that, whereas the President of the United States hath, pursuant to law, appointed the said _____ an agent for paying pensions to those persons who are now on, or may be hereafter inscribed on, the roll of the _____ agency, at _____, in the _____, for the term of _____, and until his successor shall be appointed and qualified, unless sooner suspended or removed: Now, if the said _____ shall truly and faithfully discharge all the duties of said office according to the laws and instructions which are now in force, or which shall be in force at any time during his said continuance in office; and if he, his heirs, executors, or administrators, shall regularly account, when required, for all moneys received by him as agent aforesaid, with such person or persons as shall be duly authorized on the part of the United States for that purpose; and also refund at any time, when required, any public moneys remaining in his hand unaccounted for, then this obligation shall be null, void, and of no effect; otherwise, to remain and be in full force and virtue. * * *

No. 64.

Request of Commissioner of Pensions for Advance to Pension Agent.

PENSION REQUISITION _____.

No. _____.

DEPARTMENT OF THE INTERIOR,
Pension Office, _____, 188—.

To the SECRETARY OF THE INTERIOR.

SIR: Please to cause the sum of _____ dollars to be remitted for the use of _____, agent for paying pensions at _____, and placed to his credit as follows: _____; for which the said agent is to be held accountable, and which is to be charged to the undermentioned appropriation for 188—. Under bond dated _____.

Amount, _____.

Pensions.....\$

Salary, &c.....

Fees Ex. Surg.....

Very respectfully,

_____,
Commissioner.

No. 65.

Requisition of the Secretary of the Interior for Advance for Miscellaneous Purposes.

DEPARTMENT OF THE INTERIOR.

\$_____.

No. _____.

To the SECRETARY OF THE TREASURY.

SIR: Please cause a warrant, payable out of the undermentioned appropriations, to be issued for the sum of _____ dollars, in favor of _____, with

which the said _____ is to be charged accordingly on the books of the Treasury.

Given under my hand this _____ day of _____, 188—.

_____,
Secretary of the Interior.

APPROPRIATIONS.

	\$
Total.....	

Registered: _____.

No. 66.

Requisition of the Secretary of the Interior for Advance to Pension Agent on account of Navy Pensions.

DEPARTMENT OF THE INTERIOR.

No. _____

To the SECRETARY OF THE TREASURY.

SIR: Please cause a warrant for the sum of _____ dollars to be issued in favor of _____, Pension Agent at _____, to be placed to his credit as follows: _____. Payable out of the undermentioned appropriations, with which sum the said agent is to be charged on the books of the Treasury Department under his bond dated _____, 188—.

Given under my hand this _____ day of _____, 188—.

\$

_____,
Secretary of the Interior.

Countersigned : _____,
Second Comptroller.

Registered : _____,
Auditor.

APPROPRIATIONS.

Navy pensions, 188—.....	\$
Pay and allowances, Navy pensions, 188—	
Fees of examining-surgeons, Navy pensions, 188—.....	
Arrears of Navy pensions.....	
Fees for vouchers, arrears of Navy pensions.....	
Registered: _____.	

No. 67.

Requisition of the Secretary of the Interior for Advance to Pension Agent on account of Army Pensions.

No. _____.

DEPARTMENT OF THE INTERIOR.

To the SECRETARY OF THE TREASURY.

SIR: Please cause a warrant for the sum of _____ dollars to be issued in favor of _____, Pension Agent at _____, to be placed to his credit as follows: _____. Payable out of the undermentioned appropriations, with which sum the said agent is to be charged on the books of the Treasury Department under his bond dated _____, 188—.

Given under my hand this ____ day of _____, 188—.

§

Countersigned: _____,

Second Comptroller.

Registered: _____,

Auditor.

_____,
Secretary of the Interior.

APPROPRIATIONS.

Army pensions, 188—.....\$
Pay and allowances, Army pensions, 188—
Fees of examining-surgeons, Army pensions, 188—.....
Arrears of Army pensions.....
Fees for vouchers, arrears of Army pensions.....
Registered: _____.

No. 68.

Official Bond of Register of Land Office, Receiver of Public Moneys, or Surveyor-General.
(Ante, 618-9.)

* * * The condition of the foregoing obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said _____, _____: Now, therefore, if the said _____ has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge, all the duties of the said office according to law, then the above obligation to be void and of no effect; otherwise, it shall abide and remain in full force and virtue. * * *

No. 69.

Bond of Receiver of Public Moneys as Disbursing Agent. (Ante, 619.)

* * * The condition of the foregoing obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said _____ Receiver of Public Moneys for the district of lands subject to sale at _____, in the State of _____, by commission dated the ____ day of _____, 188—; and whereas the said _____ has also been appointed a "disbursing agent" of the Government under the provisions of the act entitled "An act requiring all moneys receivable from customs and from all other sources to be paid immediately into the Treasury without abatement or reduction," &c., approved March 3, 1849:* Now, therefore, if the said _____ shall faithfully execute and discharge the duties of his office as "disbursing agent" as aforesaid, and shall promptly and faithfully account for all moneys that may legally come into his hands for disbursement, then the above obligation to be void and of no effect; otherwise, it shall abide and remain in full force and virtue. * * *

* NOTE BY THE FIRST COMPTROLLER.—This bond is not given "under the provisions" of the act referred to; it is given under the provisions of the act of August 4, 1854, section 14 (10 Stats., 573; Rev. Stats., 3614). The act of March 3, 1849 (Rev. Stats., 3617), required the receivers to pay into the Treasury, without deduction, all moneys received by them for the use of the United States. Before its passage they could retain from such moneys their official fees and office expenses; afterwards they could not, and hence it became necessary to appoint them disbursing agents, and to advance money to them from the Treasury for the payment of their own and the registers' salaries, fees, and expenses. It is not supposed that the misrecital of the statute vitiates the bond. (United States vs. Bradley, 10 Pet., 365.) Since the enactment of the Revised Statutes the proper practice is not to recite the original act which required the bond. It is not necessary to recite any statute; but if any be referred to, it should be the proper section of the Revised Statutes. The Secretary of the Interior has been advised to adopt a more accurate form of bond, under section 3614 of the Revised Statutes.

No. 70.

Request of Commissioner of General Land Office for Advance to Receiver of Public Moneys.

DEPARTMENT OF THE INTERIOR.

\$——.

GENERAL LAND OFFICE,
Washington, D. C., ——, 188—.

To the SECRETARY OF THE INTERIOR.

SIR: I have the honor to request that a requisition, payable out of the under-mentioned appropriations, be issued for the sum of —— dollars in favor of ——, Receiver of Public Moneys and Acting Disbursing Agent, and remitted him at ——, to meet the expenses of his office during the quarter ending ——, and with which the said receiver is to be charged accordingly on the books of the Treasury, under his bond of ——, 188—.

Very respectfully,

_____,
Commissioner.

APPROPRIATIONS.

_____	\$

Total	\$

No. 71.

Requisition of the Secretary of the Interior for Advance to Receiver of Public Moneys.

DEPARTMENT OF THE INTERIOR.

\$——.

No. ——.

To the SECRETARY OF THE TREASURY.

SIR: Please cause a warrant, payable out of the undermentioned appropriation, to be issued for the sum of —— dollars in favor of ——, Receiver of Public Moneys and Acting Disbursing Agent, and remitted him at ——, to meet the expenses of his office during the quarter ending ——, and with which the said receiver is to be charged accordingly on the books of the Treasury, under his bond of ——, 188—.

Given under my hand this —— day of ——, 188—.

_____,
Secretary of the Interior.

APPROPRIATION.

Act ——, 188—.	
To provide for collecting the revenue of the public lands, ——, viz:	
For salaries and commissions	\$
For expenses of depositing	
For contingent expenses	
Total	\$
Registered: ——.	

No. 72.

Official Bond of Indian Agent. (Ante, 619.)

* * * The condition of this obligation is such, that whereas the above-bounden —— has been appointed ——, and has accepted said appointment: Now, if the said —— shall, and doth at all times, henceforth and during his holding and remaining in said office, carefully discharge the duties thereof, and faithfully expend all public moneys, and honestly account, without fraud or delay, for the same, and for all public property which shall or may come into his hands, then the above obligation to be void; otherwise, to remain in full force and virtue. * * *

APPROPRIATIONS.

Collecting and subsisting Apaches of Arizona and New Mexico, 188—	§
Subsistence and civilization of the Arickarees, Gros Ventres, and Mandans, 188—	
Subsistence of the Arapahoes, Cheyennes, Apaches, Kiowas, Comanches, and Wichitas, 188—	
Support and civilization of Indians at Fort Peck Agency, 188—	
Transportation of Indian supplies, 188—	
Fulfilling treaty with Sioux of different tribes, including Santee Sioux of Nebraska, 188—	
Fulfilling treaty with Sisseton and Wahpeton, and Santee Sioux of Lake Traverse and Devil's Lake, 188—	
Fulfilling treaty with Tabequache, Muache, Capote, Weeminuche, Yampa, Grand River, and Uintah bands of Utes, 188—	
Telegraphing and purchase of Indian supplies, 188—	
Incidental expenses, Indian service in ———, 188—	
Fulfilling treaty with ———	
Total	§

Registered: ———.

No. 76.

Requisition of the Secretary of the Interior on the Secretary of the Treasury for Advance to Indian Agent.

DEPARTMENT OF THE INTERIOR.

No. ———.

To the SECRETARY OF THE TREASURY.

SIR: Please cause a warrant for the sum of ——— dollars and ——— cents to be issued in favor of the ———, to be placed to the credit of ——— ———, U. S. Indian Agent, ———. Payable out of the undermentioned appropriations, with which sum the said ——— ——— is to be charged on the books of the Treasury Department under his bond dated ———, 188—.

Given under my hand this ——— day of ———, 188—.

Countersigned: ———,
Second Comptroller.

Registered: ———,
Auditor.

Secretary of the Interior.

APPROPRIATIONS.

Pay of Indian agents, 188—	§
Pay of interpreters, 188—	
Buildings at agencies and repairs, 188—	
Contingencies of the Indian Department, 188—	
Support of schools not otherwise provided for, 188—	
Incidental expenses, Indian service in ———, 188—	
Pay of Indian police, 188—	
Pay of Indian inspectors, 188—	
Travelling expenses of Indian inspectors, 188—	
Transportation of Indian supplies, 188—	
Fulfilling treaty with ———	
Total	§
Registered: ———.	

No. 77.

Requisition of the Secretary of the Interior on the Secretary of the Treasury for Payment of Balance due Indian Agent.

DEPARTMENT OF THE INTERIOR.

No.——.

To the SECRETARY OF THE TREASURY.

SIR: Please cause a warrant, payable out of the undermentioned appropriations, for the sum of —— dollars and —— cents, to be issued in favor of ——, care of ——. Being the amount due ——, on settlement, as per certificate of the Second Comptroller, No. ——.

Given under my hand this —— day of ——, 188——.

§ ——, Secretary of the Interior.

Countersigned: ——,

Second Comptroller.

Registered: ——,

Auditor.

APPROPRIATIONS.

————— \$

—————

Total \$
Registered: ——.

No. 78.

Request of Commissioner of General Land Office for Advance to Surveyor-General and Acting Disbursing Agent.

DEPARTMENT OF THE INTERIOR.

§——.

GENERAL LAND OFFICE,
Washington, D. C., ——, 188——.

To the SECRETARY OF THE INTERIOR.

SIR: I have the honor to request that a requisition, payable out of the undermentioned appropriations, be issued for the sum of —— dollars in favor of ——, U. S. Surveyor-General and Acting Disbursing Agent, and remitted him at ——, to meet the expenses of his office during the quarter ending ——, ——, and with which the said Surveyor-General is to be charged accordingly on the books of the Treasury, under his bond of ——, 188——.

Very respectfully,

——, Commissioner.

APPROPRIATIONS.

Salaries office Surveyor-General of \$

Contingent expenses office Surveyor-General of \$

Deposits by individuals for surveying public lands \$

Surveying private-land claims in \$

Total \$

No. 79.

Requisition of the Secretary of the Interior on the Secretary of the Treasury for Advance to Surveyor-General and Acting Disbursing Agent.

DEPARTMENT OF THE INTERIOR.

§——.

No. ——.

To the SECRETARY OF THE TREASURY.

SIR: Please cause a warrant, payable out of the undermentioned appropriations, to be issued for the sum of —— dollars in favor of ——, U. S. Surveyor-General and Acting Disbursing Agent, and remitted him at ——, to meet the expenses of his office during the quarter ending ——, ——, and with which the said Surveyor-General is to be charged accordingly on the books of the Treasury, under his bond of ——, 188—.

Given under my hand this —— day of ——, 188—.

_____,
Secretary of the Interior.

APPROPRIATIONS.

Salaries office Surveyor-General of\$
Contingent expenses office Surveyor-General of
Deposits by individuals for surveying public lands.....

Total\$
Registered: ——.

No. 80.

Contract with and Bond of Deputy Surveyor. (Ante, 618.)

This agreement, made this —— day of ——, 188—, between ——, Surveyor-General of the United States for ——, acting for and in behalf of the United States, of the one part, and ——, of the other part, witnesseth, that the said ——, for and in consideration of the conditions, terms, provisions, and covenants hereinafter expressed, and according to the true intent and meaning thereof, doth hereby covenant and agree with the said ——, in his capacity aforesaid, that —— the said —— in —— own proper person——, with the assistance of such chain-men, ax-men, and flag-bearers as may be necessary, agreeably with the laws of the United States, and in strict conformity with the printed Manual of Surveying Instructions issued by the General Land Office, which is hereby incorporated with and made a part of this contract, and with such special instructions as —— may receive from the Surveyor-General in conformity therewith, will well, truly, and faithfully —— and that —— will complete these surveys in the manner aforesaid, and return the true and original field-notes thereof to the office of the said Surveyor-General on or before the —— day of —— next ensuing the date hereof, [acts of God excepted,] on penalty of forfeiture, and paying to the United States the sum mentioned in the annexed bond, if default be made in any of the foregoing conditions. And it is further expressly stipulated and made a condition of this contract, that the surveys herein described shall not be commenced before the first day of the fiscal year ending the 30th day of June, 188—, or before —— have been officially notified by the Surveyor-General of the approval of this contract by the Commissioner of the General Land Office.

And the said ——, in his capacity aforesaid, covenants and agrees with the said ——, that on the completion of the surveys above named, in manner aforesaid, there shall be paid to the said ——, on account of the United States, by the Treasury Department, upon the receipt of —— account— at the General Land Office, properly certified by ——, in his capacity aforesaid, and accompanied by the approved plats of the surveys for which the account is rendered, as a full compensation for the whole expense of surveying and making return thereof, —— per mile, for every mile and part of a mile actually run and marked in the field, random lines and offsets not included.

And it is further understood and agreed between the parties to this agreement, that the said surveys will not be approved by the said ——, in his capacity aforesaid, unless they shall be found to be in exact accordance with the requirements

in the printed Manual of Surveying Instructions: *Provided*, no member of Congress or sub-contractor shall have any part in this contract, and that no payment shall be made for any surveys not executed by the said Deputy Surveyor, ———, in ——— own proper person—.

In testimony whereof, the parties to these articles of agreement have hereunto set their hands and seals the day and year first above written.

—————,
Surveyor-General.

—————,
Deputy Surveyor.

Signed, sealed, and acknowledged before us:

—————
—————.

—————, Deputy Surveyor—, do solemnly ——— that ——— will faithfully and impartially execute the surveys mentioned in the foregoing contract to the best of ——— skill and ability.

—————,
Deputy Surveyor.

Sworn to and subscribed before me, at ———, in the ———, this ——— day of ——— 188—.

—————,
Surveyor-General.

Bond of Deputy Surveyor.

KNOW ALL MEN BY THESE PRESENTS, That we, ——— ———, as principal—, and ——— ——— and ——— ———, as sureties, are held and firmly bound unto the United States in the sum of ——— dollars, lawful money of the United States, (being double the estimated amount which would be due by the United States to the said ——— ———, on the completion of the surveys named in the foregoing contract;) for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, and each and every of us and them, jointly and severally, firmly by these presents. Signed with our hands, and sealed with our seals, this ——— day of ———, 188—.

The condition of the above obligation is such, that if the above-bounden ——— ——— shall well and truly and faithfully, according to the laws of the United States and the instructions of the said Surveyor-General, and in strict conformity with the printed Manual of Surveying Instructions, make and execute the surveys which are required of ——— to be made by the foregoing contract, and return the field-notes of the said surveys to the Surveyor-General, in the manner and within the period named in said contract, then this obligation to be void; or otherwise, it shall remain in full force and virtue. * * *

No. 81.

Official Bond of Postmaster at New Office. (Ante, 622.)

* * * The condition of this obligation is such, that whereas the above-bounden ——— ——— is Postmaster at ———, county of ———, aforesaid:

Now, if the said ——— ——— shall faithfully discharge all the duties and trusts imposed on him, either by law or the rules and regulations of the Post-Office Department, and faithfully, once in three months, or oftener if thereto required, render accounts of his receipts and expenditures, as Postmaster, to the Post-Office Department, in the manner and form prescribed by the Postmaster-General in his several instructions to postmasters, and shall pay the balance of all moneys that shall come to his hands, from postage collected, postage-stamps and stamped envelopes sold, or money-orders issued by him, or from any other source connected with the postal service, in the manner prescribed by the Postmaster-General of the United States for the time being, and shall keep safely, without loaning, using, depositing in other banks or exchanging for other funds than as allowed by law, all the public money collected by him, or otherwise at any time placed in his possession and custody, till the same is ordered by the Postmaster-General to be transferred or paid out; and when such orders for transfer or payment are received, shall faithfully and promptly make the same as directed; and shall also faithfully do and perform, as agent and depositary for the Post-Office Department, all such acts and things as may be required of him by the Postmaster-General; and, moreover, shall faithfully

account with the United States, in the manner directed by the said Postmaster-General, for all moneys, postage-stamps, stamped envelopes, postal-cards, bills, bonds, notes, drafts, receipts, vouchers, money-orders, blanks, mail-keys, maps, and other property and papers which he, as Postmaster, or as agent and depositary as aforesaid, shall receive for the use and benefit of the said Post-Office Department, then the above obligation shall be void; otherwise, of force. And it is hereby expressly agreed and stipulated that in case the said ———, Postmaster, shall, during his term of office, execute a new bond with different sureties, all the parties to the above obligation shall be held and bound for all charges against the said Postmaster up to the end of the quarter during which such new bond shall be executed; and the acceptance of such new bond, whenever the same may be signified by the Postmaster-General, shall date from the last day of such quarter. * * *

No. 82.

Official Bond of Postmaster. (Ante, 622.)

* * * Whereas the above-bounden ——— was appointed Postmaster at ———, as aforesaid, on the ——— day of ———, 188—, by and with the advice and consent of the Senate of the United States:

Now, the condition of this obligation is such, that if the said ——— shall faithfully discharge all the duties and trusts imposed on him, either by law or the rules and regulations of the Post-Office Department, and faithfully, once in three months, or oftener if thereto required, render accounts of his receipts and expenditures, as Postmaster, to the Post-Office Department, in the manner and form prescribed by the Postmaster-General, and shall pay the balance of all moneys that shall come to his hands, from postage collected, postage-stamps and stamped envelopes sold, or money-orders issued by him, or from any other source connected with the postal service, in the manner prescribed by the Postmaster-General, for the time being, and shall keep safely, without loaning, using, depositing in other banks or exchanging for other funds than as allowed by law, all the public money collected by him, or otherwise at any time placed in his possession and custody, till the same is ordered by the Postmaster-General to be transferred or paid out; and when such orders for transfer or payment are received, shall faithfully and promptly make the same as directed; and shall also faithfully do and perform all of the duties and obligations imposed upon or required of him by law or the rules and regulations of the Department, in connection with the money-order business; and shall also faithfully do and perform, as agent and depositary for the Post-Office Department, all such acts and things as may be required of him by the Postmaster-General; and, moreover, shall faithfully account with the United States, in the manner directed by the said Postmaster-General, for all moneys, postage-stamps, stamped envelopes, postal-cards, bills, bonds, notes, drafts, receipts, vouchers, money-orders, blanks, mail-keys, maps, and other property and papers which he, as Postmaster, or as agent and depositary as aforesaid, shall receive for the use and benefit of the said Post-Office Department, then the above obligation shall be void; otherwise, of force. And it is hereby expressly agreed and stipulated that in case the said ———, Postmaster, shall, during his term of office, execute a new bond with different sureties, all the parties to the above obligation shall be held and bound for all charges against the said Postmaster up to the end of the quarter during which such new bond shall be executed; and the acceptance of such new bond, whenever the same may be signified by the Postmaster-General, shall date from the last day of such quarter. * * *

No. 83.

New Official Bond of Postmaster. (Ante, 622.)

* * * The condition of this obligation is such, that whereas the above-bounden ——— is Postmaster at ———, county of ———, aforesaid:

Now, if the said ——— shall faithfully discharge all the duties and trusts imposed on him, either by law or the rules and regulations of the Post-Office Department, and faithfully, once in three months, or oftener if thereto required, render accounts of his receipts and expenditures, as Postmaster, to the Post-Office Department, in the manner and form prescribed by the Postmaster-General in his several instructions to Postmasters, and shall pay the balance of all moneys that shall come to his hands, from postage collected, postage-stamps and stamped envelopes sold, or

money-orders issued by him, or from any other source connected with the postal service, in the manner prescribed by the Postmaster-General of the United States for the time being, and shall keep safely, without loaning, using, depositing in other banks or exchanging for other funds than as allowed by law, all the public money collected by him, or otherwise at any time placed in his possession and custody, till the same is ordered by the Postmaster-General to be transferred or paid out; and when such orders for transfer or payment are received, shall faithfully and promptly make the same as directed; and shall also faithfully do and perform, as agent and depositary for the Post-Office Department, all such acts and things as may be required of him by the Postmaster-General; and, moreover, shall faithfully account with the United States, in the manner directed by the said Postmaster-General, for all moneys, postage-stamps, stamped envelopes, postal-cards, bills, bonds, notes, drafts, receipts, vouchers, money-orders, blanks, mail-keys, maps, and other property and papers which he, as Postmaster, or as agent and depositary as aforesaid, shall receive for the use and benefit of the said Post-Office Department, then the above obligation shall be void; otherwise, of force. And it is hereby expressly agreed and stipulated that in case the said ———, Postmaster, shall, during his term of office, execute a new bond with different sureties, all the parties to the above obligation shall be held and bound for all charges against the said Postmaster up to the end of the quarter during which such new bond shall be executed; and the acceptance of such new bond, whenever the same may be signified by the Postmaster-General, shall date from the last day of such quarter. * * *

NOTE.—Married LADIES are not accepted as sureties. Unmarried LADIES will be accepted, provided the magistrate certifies that they possess sufficient property in their own right and are single.

No. 84.

Official Bond of "Post-Office Inspector," and of Special Agent of Post-Office Department. (Ante, 623.)

* * * Whereas, the above-bounden ——— has been appointed a Special Agent of the Post-Office Department, and as such Special Agent, may be designated and required by the Postmaster-General to perform special duties in connection with the postal service, the collection and disbursement of public money, the receiving and safe-keeping of property belonging to the United States, for and in behalf of the Post-Office Department, and the duties of a Postmaster whenever the office of such Postmaster may be placed in his charge.

Now, the condition of this obligation is such, that if the said ———, whilst acting under his present commission or appointment of the Postmaster-General, or the renewal of the same, shall faithfully discharge all the duties and trusts imposed on him, as such Special Agent as aforesaid, by law, the rules and regulations of the Post-Office Department, and the orders and instructions of the Postmaster-General, and shall faithfully collect all public moneys that he may be instructed by the Postmaster-General to collect, and shall keep safely, without loaning, using, depositing in other banks, or exchanging for other funds than as allowed by law, all public money collected by him, or otherwise at any time placed in his possession or custody, until the same is ordered by the Postmaster-General to be transferred, disbursed, paid over, or deposited with some officer of this Department designated to receive such funds, or in some Treasury depository in the manner and form by him prescribed; and when such orders for transfer, disbursement, payment, or deposit are received, shall faithfully and promptly make the same as directed; and shall also faithfully do and perform, as agent and depositary for the Post-Office Department, all such acts and things as may be required of him by the Postmaster-General; and shall also receive all postage-stamps, stamped envelopes, bills, bonds, notes, drafts, receipts, vouchers, money-orders, blanks, mail-keys, and other property and papers belonging to the United States, which he may be directed to receive by the Postmaster-General, and safely keep the same, and faithfully account for such postage-stamps, stamped envelopes, bills, bonds, notes, drafts, receipts, vouchers, money-orders, blanks, mail-keys, and other property and papers which he may receive, or may at any time be placed in his possession or custody, and deliver and dispose of the same as he may, by the Postmaster-General, be ordered and directed; and whenever the office of any postmaster shall become vacant by reason of the death, resignation, suspension, or by the expiration of the commission of a postmaster, or his rejection by the Senate, or by the neglect or refusal of any person to take charge of the post office to which he is appointed, and the office so vacant shall be placed in the charge of the said Special Agent, that he shall faithfully discharge all the duties and trusts imposed on a postmaster either by law or the rules and regulations of the Post-Office Department, then the above obligation shall be void; otherwise, of force. * * *

No. 85.

Proposal, Contract, Bond, &c., for Star-Route Service.

Proposals altered by erasures or interlineations of the route, the service, the yearly pay, or the name of the bidder, will not be considered.

PROPOSAL.

The undersigned, ———, whose post-office address is ———, County of ———, State of ———, proposes to carry the mails of the United States from July 1, 188—, to June 30, 188—, on Route No. ——— between ——— and ———, State of ———, under the advertisement of the Postmaster-General, dated ———, 188—, "With celerity, certainty, and security," for the sum of ——— dollars per annum; and if this proposal is accepted he will enter into contract, with sureties to be approved by the Postmaster-General, within the time prescribed in said advertisement.

This proposal is made with full knowledge of the distance of the route, the weight of the mail to be carried, and all other particulars in reference to the route and service; and, also, after careful examination of the forms and instructions attached to said advertisement.

Dated ———, 188—.

—————, Bidder.

Oath required by section 245 of an act of Congress approved June 23, 1874, to be affixed to each bid for carrying the mail, and to be taken before an officer qualified to administer oaths.

I, ———, of ———, bidder for carrying the mail on Route No. ——— from ——— to ———, do swear that I have the ability, pecuniarily, to fulfil my obligation as such bidder; that the bid is made in good faith, and with the intention to enter into contract and perform the service in case said bid shall be accepted.

Sworn to and subscribed before me, ——— for the ——— of ———, this ——— day of ———, A. D. 188—; and in testimony thereof I hereunto subscribe my name and affix my official seal the day and year aforesaid.

—————, [L. S.]

NOTE.—When the oath is taken before a justice of the peace, or any other officer not using a seal, except a judge of a United States court, the certificate of a clerk of a court of record must be added, under his seal of office, that the person who administered the oath is duly qualified as such officer.

Bids must be accompanied by a certified check, or draft, on some solvent National Bank, payable to the order of the Postmaster-General, equal to 5 per centum on the present annual pay on the route when the present pay exceeds \$5,000; or in case of new service, not less than 5 per centum of the amount of the bond accompanying the bid, if said bond exceeds \$5,000. When the same persons are sureties on more than one bond their unincumbered real estate must equal in value not less than one-fourth the aggregate of all the bonds on which they are sureties.

The proposal must be signed by the bidder or each of the bidders, and the date of signing affixed.

Direct to the "Second Assistant Postmaster-General, Post-Office Department, Washington, D. C.," marked "Proposals, State of ———."

NOTE.—ANY ALTERATION, BY ERASURE OR INTERLINEATION OF A MATERIAL PART OF THE FOLLOWING BOND, WILL CAUSE IT TO BE REJECTED, unless it appears by a note or memorandum, attested by the witnesses, that the alteration was made before the bond was signed and sealed.

When partners are parties to the bond, the partnership name should not be used, but each partner should sign his individual name.

Insert the names of the principal and sureties in full in the body of the bond; also the date. The signatures to the bond should be witnessed, and each signature must be opposite a separate seal.

BOND.

* * * Whereas, by an act of Congress approved June 23, 1874, entitled "An act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-five, and for other purposes," it is provided "that every proposal for carrying the mail shall be accompanied by the bond of the bidder, with sureties approved by a postmaster," in pursuance whereof, and in compliance with the provisions of said law, this bond is made and executed, subject to all the terms, conditions, and remedies thereon, in the said act provided and prescribed, to accompany the foregoing and annexed proposal of the said ———, bidder:

Now, the condition of the said obligation is such, that if the said bidder, as aforesaid, shall, within such time after his bid is accepted as the Postmaster-General has prescribed in said advertisement, to wit, on or before the — day of —, 188—, enter into a contract with the United States of America, with good and sufficient sureties to be approved by the Postmaster-General, to perform the service proposed in his said bid, and further shall perform said service, according to his contract, then this obligation shall be void; otherwise, to be in full force and obligation in law. * * *

NOTE.—A married woman will not be accepted as surety. Sureties are liable during whole of contract term.

INTERROGATORIES.

The following interrogatories are prescribed by the Postmaster-General, to be answered, under oath, by each of the sureties in the foregoing bond:

1. What amount in value of real estate is owned by you?
2. Of what description—town or city lots, improved or unimproved, or farming land, cultivated or uncultivated?
3. Where is it situated, and in what county and State does record evidence of your title exist?

Oath of Sureties.

STATE OF —, }
County of —, } ss:

On this — day of —, 188—, personally appeared before me — and —, sureties in the foregoing bond, to me known to be the persons named in said bond as sureties, and who have executed the same as such, who, being by me duly sworn, depose and say, and each for himself deposes and says, he has executed the within bond; that his place of residence is correctly stated therein; that he is the owner of real estate worth the sum hereinafter set against his name over and above all debts due and owing by him, and all judgments, mortgages, and executions against him after allowing all exemptions of every character whatever, the total sum thus assured amounting to (\$—) — dollars, being double the amount of the foregoing bond.

And in answer to the foregoing interrogatories each of the said sureties further deposes and says that the value, description, and location of his real estate is as follows:

Names of sureties.	Value of real estate.	Description of real estate. (As required by interrogatory No. 2.)	Where located, and record evidence of title.
	\$		
	\$		

(Sureties sign here.)

—, \$—.
—, \$—.

Subscribed and sworn before me, this — day of —, 188—.

—, [L. S.]

NOTE.—When the above oath is taken before a justice of the peace, or any other officer not using a seal, except a judge of a U. S. court, the certificate of the clerk of a court of record must be added, under his seal of office, that the person who administered the oath is duly qualified as such officer. If the oath is taken before a notary public and his seal is affixed, the certificate of the clerk of a court is not necessary.

Certificate of Postmaster.

I, the undersigned, postmaster at —, State of —, after the exercise of due diligence to inform myself of the pecuniary ability and responsibility of the principal and his sureties in the foregoing bond, and of the real estate owned by them, re-

spectively, do hereby approve said bond, and certify that, in my belief, the said sureties are sufficient—sufficient to insure the payment of double the entire amount of said bond; and I do further certify that the said bond was duly signed by _____, bidder, and _____ and _____, his sureties, before signing this certificate.

_____,
Postmaster.

Dated _____, 188—.

Postmasters will observe that the improper approval of the bond, or the certificate of the sufficiency of sureties therein, exposes them not only to dismissal, but also to fine or imprisonment. Certificate must not be signed until proposal is completed and bond signed. Postmasters must not divulge the amount of any proposal certified by them under penalty of removal.

No. 86.

Contract for Carrying the Mails, including Schedule of Departures and Arrivals.

UNITED STATES OF AMERICA, _____ Co.,_____.

No. _____.

\$_____ per annum.

This article of contract, made the _____ day of _____, eighteen hundred and eighty _____, between the United States of America (acting in this behalf by the Postmaster-General) and _____, contractor, and _____, of _____, and _____, of _____, as his sureties:

Witnesseth, that whereas _____ has been accepted, according to law, as contractor for transporting the mail on route No. _____, from _____ by a schedule satisfactory to the Department, at _____ dollars per year, for and during the term beginning _____, eighteen hundred and eighty _____, and ending June thirtieth, eighteen hundred and eighty _____: Now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant, and agree with the United States of America, and do bind themselves—

1st. To carry said mail with certainty, celerity, and security, using therefor such means as may be necessary to transport the whole of said mail, whatever may be its size, weight, or increase, during the term of this contract, and within the time fixed in the annexed schedule of departures and arrivals; and so to carry until said schedule is altered by the authority of the Postmaster-General of the United States, as hereinafter provided, and then to carry according to such altered schedule; and in all cases to carry said mail in preference to passengers and freight, and to their entire exclusion if its weight, bulk, or safety shall so require. And that they will carry the mail, upon demand, by any conveyance which said contractor regularly runs, or is concerned in running, on the route, beyond the number of trips above specified, in the same manner and subject to the same regulations as are herein provided touching regular trips.

2d. To carry the mail in a safe and secure manner, free from wet or other injury, under a sufficient oil-cloth or bear-skin if carried on a horse, and in a boot under the driver's seat if carried in a coach or other vehicle.

3d. To take the mail and every part thereof from, and deliver it and every part thereof at, each post office on the route, or that may hereafter be established on the route, (or on any route that may hereafter be established and to which this contract may be extended as hereinafter provided,) and into the post office at each end of the route, and into the post office, if one is there kept, at the place at which the carrier stops for the night, and if no post office is there kept, to lock it up in some secure place, at the risk of the contractor.

They also undertake, covenant, and agree with the United States of America, and do bind themselves, jointly and severally, as aforesaid, to be accountable and answerable in damages for the person to whom the said contractor shall commit the care and transportation of the mail, and his careful and faithful performance of the obligations assumed herein and those imposed by law, not to commit the care or transportation of the mail to any person under sixteen years of age; to discharge any carrier of said mail whenever required so to do by the Postmaster-General; not to transmit, by themselves, or either of them, or either of their agents, or be concerned in transmitting, commercial intelligence more rapidly than by mail; not to carry, otherwise than in the mail, letters, packets, or newspapers which should go by mail, or convey or transport any person engaged in carrying letters, packets, or newspapers which should go by mail; to carry post-office blanks, mail-locks and bags.

and other postal supplies, and also the special agents of the Department on the exhibition of their credentials, if a coach or other suitable conveyance is used, without additional charge; to collect quarterly, if required by the Postmaster-General, of postmasters on the route, the balances due from them to the United States on their quarterly returns, and faithfully to render an account thereof to the Postmaster-General in the settlement of the quarterly accounts of said contractor, and to pay over to the Auditor of the Treasury for the Post-Office Department, on the order of the Postmaster-General, all balances remaining in his hands.

For which services, when performed, the said ————, contractor, is to be paid by the United States the sum of ———— dollars a year, to wit: Quarterly, in the months of November, February, May, and August, through the postmasters on the route, or otherwise, at the option of the Postmaster-General; said pay to be subject, however, to be reduced or discontinued by the Postmaster-General, as hereinafter stipulated, or to be suspended in case of delinquency.

It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster-General may discontinue or extend this contract, change the schedule and *termini* of the route, and alter, increase, decrease, or extend the service, in accordance with law, he allowing a *pro rata* increase of compensation for any additional service thereby required, or for increased speed, if the employment of additional stock or carriers is rendered necessary; and, in case of decrease, curtailment, or discontinuance of service, as a full indemnity to said contractor, one month's extra pay on the amount of service dispensed with, and a *pro rata* compensation for the service retained: Provided, however, that, in case of increased expedition, the contractor may, upon timely notice, relinquish the contract.

It is hereby also stipulated and agreed by the said contractor and his sureties as aforesaid, that they shall forfeit—

1. The pay of a trip when it is not run, and, in addition, if no sufficient excuse for the failure is furnished, an amount not more than three times the pay of the trip.

2. At least one-fourth of the pay of a trip when the running is so far behind time as to fail to make connection with a depending mail.

3. For violating any of the foregoing provisions touching the transmission of commercial intelligence more rapidly than by mail; or giving preference to passengers or freight over the mail or any portion thereof, or for leaving the same for their accommodation; or carrying, otherwise than in the mail, matter which should go by mail; or transporting persons engaged in so doing, with knowledge thereof, a penalty equal to a quarter's pay.

4. For violating any other provision of this contract touching the carriage of the mails, or the time and manner thereof, without a satisfactory explanation of the delinquency, in due time, to the Postmaster-General, a penalty in his discretion. That these forfeitures may be increased into penalties of a higher amount in the discretion of the Postmaster-General, according to the nature or frequency of the failure and the importance of the mail: Provided that, except as herein otherwise specified, and except as provided by law, no penalty shall exceed three times the pay of a trip in each case.

And it is hereby further stipulated and agreed by the said contractor and his sureties that the Postmaster-General may annul the contract for repeated failures; for violating the postal laws; for disobeying the instructions of the Post-Office Department; for refusing to discharge a carrier when required by the Department; for transmitting commercial intelligence or matter which should go by mail, contrary to the stipulations herein; for transporting persons so engaged as aforesaid; whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress; and whenever, in the opinion of the Postmaster-General, the service cannot be safely continued, the revenues collected, or the laws maintained on the road or roads over which said mail is transported.

And it is hereby further stipulated and agreed that such annulment shall not impair the right to claim damages from said contractor and his sureties under this contract; but such damages may, for the purpose of set-off or counter-claim, in the settlement of any claim of said contractor or his sureties against the United States, whether arising under this contract or otherwise, be assessed and liquidated by the Auditor of the Treasury for the Post-Office Department.

And it is hereby stipulated and agreed by the said contractor and his sureties that this contract may, in the discretion of the Postmaster-General, be continued in force beyond its express terms for a period not exceeding six months, until a new contract with the same or other contractors shall be made by the Postmaster-General.

And this contract shall, in all its parts, be subject to the terms and requirements of the act of Congress approved April twenty-first, one thousand eight hundred and eight, entitled "An act concerning public contracts," and of the act of Congress

approved June eighth, one thousand eight hundred and seventy-two, entitled "An act to revise, consolidate, and amend the statutes relating to the Post-Office Department," and of the act of Congress approved May 17, 1878, entitled "An act to regulate the advertising of mail lettings, and for other purposes."

In witness whereof, the said Postmaster-General has caused the seal of the Post-Office Department to be hereto affixed, and has attested the same by his signature, and the said contractor and his sureties have hereunto set their hands and seals the day and year set opposite their names, respectively.

_____,
Postmaster-General.

Signed, sealed, and delivered by the Postmaster-General in the presence of—

And by the other parties hereto in the presence of—

_____, }
_____, } Witnesses.

Signed this _____ day of _____, 188—.

_____, [S. AL.] Contractor.

Signed this _____ day of _____, 188—.

_____, [SEAL.] } Sureties.

Signed this _____ day of _____, 188—.

_____, [SEAL.] }

POST OFFICE, _____, _____, 188—.

I hereby certify that _____, of _____, and _____, of _____, are good and sufficient sureties for the amount of the foregoing contract.

_____,
Postmaster.

Schedule of Departures and Arrivals.

Leave _____; arrive at _____.

Leave _____; arrive at _____.

Leave _____; arrive at _____.

Leave _____; arrive at _____.

Provided, that when more than seven minutes are taken for opening and closing the mails at any office, the surplus time so taken is to be allowed in addition to the time fixed in this schedule.

Certificate of the Oath of Mail Contractors and Carriers.

Required by act of Congress of June 8, 1872.

(~~Take~~ Take this oath after signing the foregoing contract.)

I, _____, being "employed in the care, custody, and conveyance of the mail" as contractor on route No. _____, from _____ to _____, State of _____, do swear _____ that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post offices and post-roads within the United States; and that I will honestly and truly account for and pay over any moneys belonging to the said United States which may come into my possession or control. And I do further solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign or domestic: So help me God.

_____,
Contractor.

COUNTY OF _____, }
State of _____, } ss:

Sworn before the subscriber, _____ for the county and State aforesaid, this _____ day of _____, A. D. 188—; and I also certify that the person above named is above the age of twenty-one years to the best of my knowledge and belief.

_____. [SEAL.]

NOTE.—When the oath is taken before a justice of the peace, or any other officer not using a seal except a judge of a United States court, the certificate of the clerk of a court of record must be added under his seal of office, that the person who administered the oath is duly qualified as such officer.

The undersigned, _____ of the _____ court of _____ County, in the State of _____, hereby certifies that _____ whose name is signed to the above certificate of the oath of _____, is now, and was at the time of signing the same, a duly commissioned and qualified justice of the peace, authorized to administer oaths and affirmations in the State of _____.

[SEAL.]

_____, (Signature.)
_____, (Office.)

No. 87.

Requisition of Postmaster-General on Secretary of Treasury for Advance to Disbursing Clerk of Post-Office Department.

POST-OFFICE DEPARTMENT,
Washington, D. C., _____, 188—.

Honorable _____,
Secretary of the Treasury.

SIR: Please cause a warrant to be issued in favor of _____, disbursing clerk, Post-Office Department, for the sum of _____ dollars, with which he is to be charged and held accountable, under the following heads of appropriations.
Very respectfully,

_____,
Postmaster-General.

APPROPRIATIONS.

_____ \$

No. 88.

Requisition, in the Form of an Account stated by Sixth Auditor, for Payment of Postal-Revenue Deficiency Appropriation to Postmaster-General. [See ante, 502, 505.]

THE TREASURY OF THE UNITED STATES,
To the UNITED STATES, "for the service of the Post-Office Department."

For amount of appropriation required to _____

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT,
_____, 188—.

I certify that the foregoing account of appropriation for the service of the Post-Office Department, in pursuance of the act named, as taken from the books of this office, _____ correct.

_____,
Auditor.

No. 89.

Official Bond of Marshal of the United States. (Ante, 624.)

* * * The condition of the above obligation is such, whereas the President of the United States hath, pursuant to law, appointed the said _____ to be Marshal of the United States for the _____ of _____, to have and to hold the same, with all the rights, privileges, and emoluments thereunto lawfully appertaining, for four years from the _____ day of _____, 188—, unless sooner removed therefrom, as by a commission to him bearing date the _____ day of _____, 188—, more fully appears.
Now, if the said _____, by himself and by his deputies, shall faithfully perform all the duties of the said office of marshal, then this obligation to be void; otherwise, to remain in full force and virtue. * * *

No. 90.

United States Marshal's Estimate of Funds Required, and Request for Advance.

— DISTRICT OF —.

Hon. ———,
Attorney-General U. S.

SIR: The — term of the — court of the United States for this district will begin on the — day of —, 188—, at —, and will probably continue — days. It is estimated that there will be needed to defray the expenses of said term the sums specified within.

Please cause a warrant to be issued in my favor for — dollars (with which I am to be charged on the books of the Treasury Department), and direct that a draft on — for the amount be remitted to me at —.

Very respectfully,

———,
Marshal.

Date —, —, 188—.

	Estimated ex- penses of the term.	Balance on hand applicable to same.	Net sums required to defray said ex- penses.
<i>Fees of Jurors.</i>			
Per diems of — grand jurors, — days, at \$2.	\$	\$	\$
Per diems of — petit jurors, — days, at \$2.			
Mileage of jurors			
<i>Fees of Witnesses.</i>			
Per diems and mileage before U. S. courts...			
Per diems and mileage before U. S. commis- sioners.....			
<i>Support of U. S. Prisoners.</i>			
Board, necessary medicine, clothing, &c.....			
<i>Miscellaneous Expenses.</i>			
For — bailiffs, — days, at \$2			
For crier, — days, at \$—			
For stationery			
For fuel			
For lights			
For —			
For —			
<i>Fees of Marshals.</i>			
For attendance on court and serving process.			
Total amount required			\$.....

REMARKS.

No. 91.

Requisition of Attorney-General on Secretary of Treasury for Advance to United States Marshal.

DEPARTMENT OF JUSTICE,
Washington, —, 188—.

\$——.
To the SECRETARY OF THE TREASURY.

SIR: Please cause a warrant, payable out of the undermentioned appropriation, to be issued for the sum of — dollars, in favor of —, being the amount

required by him to defray the expenses of ———, per his letter of the ———. Draft on ———. Remit to ———, with which the said ——— is to be charged accordingly on the books of the Treasury.

—————,
Attorney-General.

APPROPRIATION.

§

§

Registered: ———.

No. 92.

Official Bond of Clerk of United States District Court. (Ante, 625.)

* * * The condition of the above obligation is such, whereas, pursuant to law, ——— has been appointed Clerk of the ——— Court of the United States for the ——— District of ———, to have and to hold the same, with all the rights, privileges, and emoluments thereunto lawfully appertaining, as by an appointment to him bearing date the ——— day of ———, 188—, more fully appears, a certified copy of which is hereunto annexed:

Now, if the said ———, by himself and by his deputies, shall faithfully discharge the duties of his office, and seasonably record the decrees, judgments, and determinations of the said court, and properly account for all moneys coming into his hands, as required by law, then this obligation to be void; otherwise, to remain in full force and virtue. * * *

NOTE BY THE FIRST COMPTROLLER.—These bonds are now taken under the act of February 22, 1875, section 3 (18 Stats., 333), which, in effect, repeals section 795 of the Revised Statutes. The condition in respect of accounting for moneys is contemplated by section 797, although it is not expressly prescribed in the act of 1875. (*United States vs. Hawkins*, 10 Pet., 133; *United States vs. Brown*, Gilp., 155; *United States vs. Tingey*, 5 Pet., 115; *Martin's case*, 2 Lawrence, Compt. Dec., 333.)

No. 93.

Official Bond of Commissioner of Agriculture. (Ante, 628.)

KNOW ALL MEN BY THESE PRESENTS, that we, ———, Commissioner of Agriculture, and ——— and ———, as sureties, are held and firmly bound unto ———, Treasurer of the United States of America, and his successors in office, for the use of the said United States, in the sum of ten thousand dollars, lawful money of the United States of America; to which payment, well and truly to be made and done, we do jointly and severally bind ourselves, and each of our heirs, executors, administrators, and every of them, by these presents. Sealed with our seals, and dated this ——— day of ———, A. D. 188—.

The condition of this obligation is such, that, whereas the above-named ——— has been appointed Commissioner of Agriculture: Now, therefore, if the said ——— shall, during his continuance in said office, render to the Treasurer of the United States for the time being, true and faithful quarterly accounts of all moneys which shall be received by the said ———, by virtue of his said office, then this obligation to be void; otherwise, to remain in full force and effect.

Witnesses:

—————
—————

(The form of bond of the chief clerk of the Department of Agriculture is the same as the above. The amount of his bond is \$5,000.)

No. 94.

*Requisition of Commissioner of Agriculture for Advance to Disbursing Clerk of Department of Agriculture.*DEPARTMENT OF AGRICULTURE,
_____, 188—.Honorable _____, *Secretary of the Treasury.*

SIR: Please cause a warrant to be issued in favor of _____, disbursing _____, Department of Agriculture, for the sum of _____, with which he is to be charged and held accountable, under the following heads of appropriations.

Very respectfully,

_____,
Commissioner of Agriculture.

APPROPRIATIONS.

\$

No. 95.

Official Bond of Commissioner of the District of Columbia. (Ante, 631.)

* * * The condition of the above obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said _____ a Commissioner of the District of Columbia, to have and to hold the same, with all the rights, privileges, and emoluments thereunto appertaining for _____ years from the _____ day of _____, 188—, unless sooner removed therefrom, as by a commission to him, bearing date the _____ day of _____, 188—, more fully appears:

Now, therefore, if the said _____ shall faithfully perform all the duties of the said office of Commissioner, then this obligation to be void; otherwise, to remain in full force and effect. * * *

No. 96.

*Requisition of Commissioners of the District of Columbia on Secretary of Treasury for Advance to them.*OFFICE OF THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, _____, 188—.

To the SECRETARY OF THE TREASURY.

SIR: Please cause a warrant to be issued in favor of the Commissioners of the District of Columbia, for the sum of _____ dollars and _____ cents, with which they are to be charged and held accountable, under the following heads of appropriations.

Very respectfully,

_____,
_____,
_____,
Commissioners of District of Columbia.

Approved, and submitted to the First Comptroller for his recommendation.

_____,
Chief Clerk.

I recommend the advance requested.

_____,
First Comptroller.

_____, 188—.

APPROPRIATIONS.

\$

No. 97.

Official Bond of the Superintendent of the Government Hospital for the Insane. (Ante, 632.)

* * * The condition of the foregoing obligation is such, that whereas the Secretary of the Interior hath appointed the said ——— to be Superintendent of the Government Hospital for the Insane :

Now, if the said ——— shall, at all times, truly and faithfully discharge the duties of said office according to law, then the above obligation to be void and of no effect; otherwise, to remain in full force and virtue. * * *

No. 98.

Bond of Disbursing Agent for the Columbia Institution for the Instruction of the Deaf and Dumb. (Ante, 633.)

* * * The condition of the foregoing obligation is such, that whereas the Secretary of the Interior has, pursuant to law, constituted and appointed the said ——— Disbursing Agent for the Columbia Institution for the Instruction of the Deaf and Dumb of the District of Columbia :

Now, therefore, if the said ——— shall well and truly execute and discharge all the duties of the said office of Disbursing Agent according to the laws of the United States, and the regulations of the Department of the Interior and of the Treasury Department made in conformity therewith, safely keeping and correctly paying out all sums of public money advanced to him, or coming into his hands from time to time, without loaning, using, depositing in bank, or exchanging for other funds than as allowed by law, then this obligation to be void and of none effect; otherwise, to remain in full force and virtue. * * *

No. 99.

Official Bond of Treasurer of the Columbia Hospital for Women and Lying-in Asylum. (Ante, 633.)

* * * The condition of the foregoing obligation is such, that whereas the above-bound ——— has been duly elected and appointed Treasurer of the Columbia Hospital for Women and Lying-in Asylum, incorporated by an act of Congress entitled "An act to incorporate the Women's Hospital Association of the District of Columbia," approved June 1, 1866, for the purposes therein mentioned :

Now, therefore, if the said ——— shall well and truly execute and discharge all the duties of said office of Treasurer according to the laws of the United States, and the regulations of the Treasury Department and the Department of the Interior made in conformity therewith, safely keeping and correctly paying out all sums of public money advanced to him or coming into his hands from time to time, without loaning, using, depositing in bank, or exchanging for other funds than as allowed by law, then this obligation to be void and of none effect; otherwise, to remain in full force and virtue. * * *

No. 100.

Official Bond of Treasurer of the Reform School of the District of Columbia. (Ante, 633.)

* * * Whereas the above-bounden ——— has been elected Treasurer of the Board of Trustees of the Reform School of the District of Columbia, to serve until his successor has been elected and qualified: Now the condition of this obligation is such, that if the said ——— shall faithfully account for all the money which shall be received by him as treasurer as aforesaid, then this obligation shall be null and void; else, shall remain in full force and virtue. * * *

No. 90.

United States Marshal's Estimate of Funds Required, and Request for Advance.

— DISTRICT OF —.

Hon. ———,
Attorney-General U. S.

SIR: The — term of the — court of the United States for this district will begin on the — day of —, 188—, at —, and will probably continue — days. It is estimated that there will be needed to defray the expenses of said term the sums specified within.

Please cause a warrant to be issued in my favor for — dollars (with which I am to be charged on the books of the Treasury Department), and direct that a draft on — for the amount be remitted to me at —.

Very respectfully,

———,
Marshal.

Date —, —, 188—.

	Estimated ex- penses of the term.	Balance on hand applicable to same.	Net sums required to defray said ex- penses.
<i>Fees of Jurors.</i>			
Per diems of — grand jurors, — days, at \$2.	\$	\$	\$
Per diems of — petit jurors, — days, at \$2.			
Mileage of jurors			
<i>Fees of Witnesses.</i>			
Per diems and mileage before U. S. courts...			
Per diems and mileage before U. S. commis- sioners.....			
<i>Support of U. S. Prisoners.</i>			
Board, necessary medicine, clothing, &c.....			
<i>Miscellaneous Expenses.</i>			
For — bailiffs, — days, at \$2			
For crier, — days, at \$ —			
For stationery			
For fuel			
For lights			
For —			
For —			
<i>Fees of Marshals.</i>			
For attendance on court and serving process.			
Total amount required			\$

REMARKS.

No. 91.

Requisition of Attorney-General on Secretary of Treasury for Advance to United States Marshal.

DEPARTMENT OF JUSTICE,
Washington, —, 188—.

§ —.
To the SECRETARY OF THE TREASURY.

No. —.

SIR: Please cause a warrant, payable out of the undermentioned appropriation, to be issued for the sum of — dollars, in favor of —, being the amount

required by him to defray the expenses of ———, per his letter of the ———. Draft on ———. Remit to ———, with which the said ——— is to be charged accordingly on the books of the Treasury.

—————,
Attorney-General.

APPROPRIATION.

§

§

Registered: ———.

No. 92.

Official Bond of Clerk of United States District Court. (Ante, 625.)

* * * The condition of the above obligation is such, whereas, pursuant to law, ——— has been appointed Clerk of the ——— Court of the United States for the ——— District of ———, to have and to hold the same, with all the rights, privileges, and emoluments thereunto lawfully appertaining, as by an appointment to him bearing date the ——— day of ———, 188—, more fully appears, a certified copy of which is hereunto annexed:

Now, if the said ———, by himself and by his deputies, shall faithfully discharge the duties of his office, and seasonably record the decrees, judgments, and determinations of the said court, and properly account for all moneys coming into his hands, as required by law, then this obligation to be void; otherwise, to remain in full force and virtue. * * *

NOTE BY THE FIRST COMPTROLLER.—These bonds are now taken under the act of February 22, 1875, section 3 (18 Stats., 333), which, in effect, repeals section 795 of the Revised Statutes. The condition in respect of accounting for moneys is contemplated by section 797, although it is not expressly prescribed in the act of 1875. (United States vs. Hawkins, 10 Pet., 133; United States vs. Brown, Gilp., 155; United States vs. Tingey, 5 Pet., 115; Martin's case, 2 Lawrence, Compt. Dec., 333.)

No. 93.

Official Bond of Commissioner of Agriculture. (Ante, 628.)

KNOW ALL MEN BY THESE PRESENTS, that we, ———, Commissioner of Agriculture, and ——— and ———, as sureties, are held and firmly bound unto ———, Treasurer of the United States of America, and his successors in office, for the use of the said United States, in the sum of ten thousand dollars, lawful money of the United States of America; to which payment, well and truly to be made and done, we do jointly and severally bind ourselves, and each of our heirs, executors, administrators, and every of them, by these presents. Sealed with our seals, and dated this ——— day of ———, A. D. 188—.

The condition of this obligation is such, that, whereas the above-named ——— has been appointed Commissioner of Agriculture: Now, therefore, if the said ——— shall, during his continuance in said office, render to the Treasurer of the United States for the time being, true and faithful quarterly accounts of all moneys which shall be received by the said ———, by virtue of his said office, then this obligation to be void; otherwise, to remain in full force and effect.

Witnesses:

—————
—————

(The form of bond of the chief clerk of the Department of Agriculture is the same as the above. The amount of his bond is \$5,000.)

No. 94.

Requisition of Commissioner of Agriculture for Advance to Disbursing Clerk of Department of Agriculture.

DEPARTMENT OF AGRICULTURE.
_____, 188—.

Honorable _____, Secretary of the Treasury.

SIR: Please cause a warrant to be issued in favor of _____, disbursing _____, Department of Agriculture, for the sum of _____, with which he is to be charged and held accountable, under the following heads of appropriations.

Very respectfully,
_____,
Commissioner of Agriculture.

APPROPRIATIONS.

_____§

No. 95.

Official Bond of Commissioner of the District of Columbia. (Ante, 631.)

* * * The condition of the above obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said _____ a Commissioner of the District of Columbia, to have and to hold the same, with all the rights, privileges, and emoluments thereunto appertaining for _____ years from the _____ day of _____, 188—, unless sooner removed therefrom, as by a commission to him, bearing date the _____ day of _____, 188—, more fully appears:

Now, therefore, if the said _____ shall faithfully perform all the duties of the said office of Commissioner, then this obligation to be void; otherwise, to remain in full force and effect. * * *

No. 96.

Requisition of Commissioners of the District of Columbia on Secretary of Treasury for Advance to them.

OFFICE OF THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, _____, 188—.

To the SECRETARY OF THE TREASURY.

SIR: Please cause a warrant to be issued in favor of the Commissioners of the District of Columbia, for the sum of _____ dollars and _____ cents, with which they are to be charged and held accountable, under the following heads of appropriations.

Very respectfully,
_____,
_____,
_____,
Commissioners of District of Columbia.

Approved, and submitted to the First Comptroller for his recommendation.

_____,
Chief Clerk.

I recommend the advance requested.

_____,
First Comptroller.

_____, 188—.

APPROPRIATIONS.

_____§

No. 97.

Official Bond of the Superintendent of the Government Hospital for the Insane. (Ante, 632.)

* * * The condition of the foregoing obligation is such, that whereas the Secretary of the Interior hath appointed the said ——— to be Superintendent of the Government Hospital for the Insane :

Now, if the said ——— shall, at all times, truly and faithfully discharge the duties of said office according to law, then the above obligation to be void and of no effect; otherwise, to remain in full force and virtue. * * *

No. 98.

Bond of Disbursing Agent for the Columbia Institution for the Instruction of the Deaf and Dumb. (Ante, 633.)

* * * The condition of the foregoing obligation is such, that whereas the Secretary of the Interior has, pursuant to law, constituted and appointed the said ——— Disbursing Agent for the Columbia Institution for the Instruction of the Deaf and Dumb of the District of Columbia :

Now, therefore, if the said ——— shall well and truly execute and discharge all the duties of the said office of Disbursing Agent according to the laws of the United States, and the regulations of the Department of the Interior and of the Treasury Department made in conformity therewith, safely keeping and correctly paying out all sums of public money advanced to him, or coming into his hands from time to time, without loaning, using, depositing in bank, or exchanging for other funds than as allowed by law, then this obligation to be void and of none effect; otherwise, to remain in full force and virtue. * * *

No. 99.

Official Bond of Treasurer of the Columbia Hospital for Women and Lying-in Asylum. (Ante, 633.)

* * * The condition of the foregoing obligation is such, that whereas the above-bound ——— has been duly elected and appointed Treasurer of the Columbia Hospital for Women and Lying-in Asylum, incorporated by an act of Congress entitled "An act to incorporate the Women's Hospital Association of the District of Columbia," approved June 1, 1866, for the purposes therein mentioned :

Now, therefore, if the said ——— shall well and truly execute and discharge all the duties of said office of Treasurer according to the laws of the United States, and the regulations of the Treasury Department and the Department of the Interior made in conformity therewith, safely keeping and correctly paying out all sums of public money advanced to him or coming into his hands from time to time, without loaning, using, depositing in bank, or exchanging for other funds than as allowed by law, then this obligation to be void and of none effect; otherwise, to remain in full force and virtue. * * *

No. 100.

Official Bond of Treasurer of the Reform School of the District of Columbia. (Ante, 633.)

* * * Whereas the above-bounden ——— has been elected Treasurer of the Board of Trustees of the Reform School of the District of Columbia, to serve until his successor has been elected and qualified: Now the condition of this obligation is such, that if the said ——— shall faithfully account for all the money which shall be received by him as treasurer as aforesaid, then this obligation shall be null and void; else, shall remain in full force and virtue. * * *

No. 101.

Official Bond of Disbursing Agent of the United States Coast Survey. (Ante, 606.)

* * * Whereas the said _____ has been appointed Disbursing Agent for Coast Survey of the United States: The condition of the above obligation is such, that if the said _____ shall faithfully disburse and account for all moneys which may be received by him as such disbursing agent, and shall truly and faithfully perform all the duties of that appointment, then the foregoing obligation to be void and of no effect: otherwise, it shall remain in full force. * * *

No. 102.

Official Bond of the Secretary of a Territory. (Ante, 620.)

* * * Whereas the President of the United States has nominated, and by and with the advice and consent of the Senate appointed, the said _____ Secretary of the Territory of _____, to have and to hold the said office, with all the privileges and emoluments to the same of right appertaining, during the pleasure of the President of the United States for the time being, as in and by a commission under the hands of the said President and the Secretary of State, and the seal of the United States, bearing date the _____ day of _____, in the year of our Lord one thousand eight hundred and eighty _____, more fully appears: Now, therefore, the condition of this obligation is such, that if the said _____ has faithfully and diligently performed, executed, and discharged, and shall continue faithfully and diligently to perform, execute, and discharge, all and singular, the duties of said office according to law, then this obligation to be void and of none effect; otherwise, to be and remain in full force and virtue. * * *

No. 103.

Official Bond of Disbursing Agent for the United States Geological Survey. (Ante, 621.)

* * * The condition of the foregoing obligation is such, that whereas the Secretary of the Interior hath appointed the said _____ to be disbursing agent for the U. S. Geological Survey, under the title of Chief Disbursing Clerk and Property Clerk: Now, if the said _____ shall, at all times, truly and faithfully discharge the duties of the said office according to the laws of the United States, and the regulations of Treasury Department and of the Department of the Interior _____ made in conformity therewith, safely keeping and correctly paying out all sums of public money advanced to him or coming into his hands from time to time, without loaning, using, depositing in bank, or exchanging for other funds than as allowed by law, then the above obligation to be void and of no effect; otherwise, to remain in full force and virtue. * * *

NOTE BY THE FIRST COMPTROLLER.—The act of March 3, 1879 (20 Stats., 394) establishing the office of Director of the Geological Survey under which the "chief disbursing clerk and property clerk" is employed, does not create or establish the office of chief disbursing clerk and property clerk, or any other clerical or disbursing officer. In *The United States vs. Maurice et al.* (2 Brock. C. C., 100), Chief Justice Marshall, construing the Constitution of the United States, Article I, sections 2 and 3, says: "I think it [the principle that all offices not provided for in the Constitution shall be established by law] accords best with the general spirit of the Constitution, which seems to have arranged the creation of office among legislative powers." He further says (*Id.*, 108). "If the office had no existence, it has been already stated, that a bond to perform its duties generally could create no obligation." According to this view, the foregoing bond would create no obligation, since it is conditioned for the true and faithful discharge of "the duties of the said office, according to the laws of the United States." There is no such office; hence the condition is void. The Secretary of the Interior has authority, under section 3614 of the Revised Statutes, to appoint a disbursing agent; the bond recites such an appointment, and there is another condition, or rather a part of the condition, that the said agent shall safely keep and correctly pay out all sums of public money advanced to him, &c. These circumstances raise a question as to whether the bond can be held liable as the bond of a duly appointed *disbursing agent*; and the affirmative depends upon whether there are two separable conditions in the bond; one, applying to an official liability, and one to a mere agency. If so, the obligation would be valid as to the agency, and void as to the alleged office. (*United States vs. Bradley*, 10 Pet., 343; *United States vs. Brown*, Gilp., 155; *Postmaster-General vs. Early*, 12 Wheat., 136; *Dixon vs. United States*, 1 Brock. C. C., 178, 195.) It is doubtful, however, whether the condition of this bond is separable. It is condi-

tioned generally for the performance of the *duties of an office*, and the subsequent part of the condition appears to be a specific and unnecessary mention of one of these duties. No mention is made of another duty, viz., to *faithfully account*, from time to time, for the moneys advanced; and yet, in a valid bond, a condition for the performance of this duty would be implied. (*United States vs. Hawkins*, 10 Pet., 133.) The question as to the right to receive a *salary* in such case does not affect the validity of the bond; for although the office may not exist, and there is no appropriation from which the *salary* of the clerk can be paid, he can, nevertheless, be compensated for his services as a *disbursing agent*, out of the regular annual appropriation for the Geological Survey, in an amount prescribed at the discretion of the Secretary of the Interior. It is understood that the "Regulations" of the Geological Survey provide for the appointment of a number of clerks; but it does not appear that Congress has, at any time, given these regulations such sanction as would authorize the employment of clerks.

No. 104.

Bond of Disbursing Agent of the Fund for Suppression of Counterfeiting. (Ante, 606.)

* * * The condition of the foregoing obligation is such, that whereas the Secretary of the Treasury, by letter, bearing date the — day of —, 188—, has designated the said — to disburse the fund appropriated by Congress "for expenses in detecting and bringing to trial and punishment persons engaged in counterfeiting Treasury notes, bonds, and other securities of the United States, as well as the coins of the United States, and other frauds upon the Government:" Now, therefore, if the said — shall truly and faithfully execute and discharge all and singular the duties thus devolved upon him, and shall, moreover, truly and faithfully, keep safely, and disburse and pay out all sums of public money placed, or coming into his hands from time to time, without loaning, using, depositing in banks, or exchanging for other funds than as allowed by law, and shall do and perform all other duties which may be imposed by any act of Congress, or by any regulation of the Treasury Department made in conformity to law, then this obligation to be void and of no effect; otherwise, to remain in full force and virtue. * * *

No. 105.

Bond of Disbursing Agent for Executive Mansion. (Ante, 637.)

* * * The condition of the foregoing obligation is such, that whereas the President of the United States has, pursuant to law, constituted and appointed the said — a Disbursing Agent to pay salaries and contingent expenses of Executive Mansion: Now, therefore, if the said — shall well and truly execute and discharge all the duties of said office of Disbursing Agent, according to the laws of the United States and the regulations of the Treasury Department made in conformity therewith, safely keeping and correctly paying out all sums of public money advanced to him, or coming into his hands from time to time, without loaning, using, depositing in bank, or exchanging for other funds than as allowed by law, then this obligation to be void and of none effect; otherwise, to remain in full force and virtue. * * *

No. 106.

Bond of Disbursing Agent for the Census Office. (Ante, 621.)

* * * The condition of the foregoing obligation is such, that whereas the Secretary of the Interior hath appointed the said — to be Disbursing Agent for the Census Office: Now, if the said — shall, at all times, truly and faithfully discharge the duties of the said office according to the laws of the United States and the regulations of the Treasury Department made in conformity therewith, safely keeping and correctly paying out all sums of public money advanced to him or coming into his hands from time to time, without loaning, using, depositing in bank, or exchanging for other funds than as allowed by law, then the above obligation to be void and of no effect; otherwise, to remain in full force and virtue. * * *

No. 107.

Bond of Disbursing Agent for the Census Office, as Collector of Mining Statistics.
(*Ante*, 621.)

* * * The condition of the foregoing obligation is such, that whereas the Secretary of the Interior has appointed the said _____ to be Disbursing Agent for the collection of mining statistics under the Rocky-Mountain division of the U. S. Geological Survey: Now, if the said _____ shall, at all times, truly and faithfully discharge the duties of the said office according to the laws of the United States and the regulations of the Treasury Department and the Department of the Interior, made in conformity therewith, safely keeping and correctly paying out all sums of public money advanced to him or coming into his hands from time to time, without loaning, using, depositing in bank, or exchanging for other funds than as allowed by law, then the above obligation to be void and of no effect; otherwise, to remain in full force and virtue. * * *

No. 108.

Bond of Librarian of Congress as Register of Copyrights. (*Ante*, 631.)

(Revised Statutes, 4950.)

* * * The condition of the above obligation is such, that if the said _____ shall well and faithfully render to the proper officers of the Treasury a true account of all moneys received by virtue of his office as Register of Copyrights, under the provisions of an act "to revise, consolidate, and amend the statutes relating to patents and copyrights," approved July 8, 1870, then the above obligation to be void; otherwise, to remain in full force. * * *

No. 109.

Bond of Librarian of Congress as Disbursing Agent. (*Ante*, 631.)

* * * The condition of the foregoing obligation is such, that whereas the said _____ is a disbursing officer for the payment of salaries in the Library of Congress: Now, therefore, if the said _____ shall well and truly execute and discharge all the duties of said office of disbursing officer according to the laws of the United States and the regulations of the Treasury Department made in conformity therewith, safely keeping and correctly paying out all sums of public money advanced to him or coming into his hands from time to time, without loaning, using, or depositing in bank, or exchanging for other funds than as allowed by law, then this obligation to be void and of none effect; otherwise, to remain in full force and virtue. * * *

No. 110.

Bond of Disbursing Agent of Joint Committee on Library of Congress. (*Ante*, 630.)

* * * The above bond hath this condition: Whereas, the Joint Committee on the Library of Congress have appointed the said _____ as agent of the said Joint Committee on the Library of Congress for disbursing the funds of the Library of Congress: Now, if the said _____ shall well and truly discharge all his duties as such agent, shall pay the orders of the chairman of said committee, render due accounts of the same, with the vouchers, to the Treasury Department, quarterly, or at any other time required, and shall account for all moneys which may at any time come into his hands as such agent, then the above obligation to be void. * * *

No. 111.

Official Bond of the Comptroller of the Currency. (Ante, 599.)

* * * The condition of the foregoing obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said _____ to be Comptroller of the Currency, under the provisions of section three hundred and twenty-five (325) of the Revised Statutes of the United States: Now, therefore, if the said _____ shall faithfully discharge the duties of his office aforesaid, then this obligation to be void; otherwise, to remain in full force and virtue. * * *

No. 112.

Official Bond of Deputy Comptroller of the Currency. (Ante, 600.)

* * * The condition of the foregoing obligation is such, that whereas the Secretary of the Treasury of the United States hath, pursuant to law, appointed the said _____ to be Deputy Comptroller of the Currency under the act entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864: Now, therefore, if the said _____ shall faithfully discharge the duties of his office as aforesaid, then this obligation to be void; otherwise, to remain in full force and virtue. * * *

No. 113.

Bond of National-Bank Receiver. (Ante, 600.)

KNOW ALL MEN BY THESE PRESENTS, That I, _____, of the _____ of _____, County of _____ and State of _____, as principal, and _____ and _____, both of the _____ of _____, County of _____, and State of _____, as sureties, are held and firmly bound unto _____, as Comptroller of the Currency, or his successors in said office, in the penal sum of _____ thousand dollars, (\$_____) lawful money of the United States; to the payment of which to the said _____, as Comptroller aforesaid, or his successors in said office, or assigns, we do hereby, jointly and severally, bind ourselves, our executors, and administrators, firmly by these presents. Sealed with our seals, and dated this _____ day of _____, A. D. 188—.

The condition of this obligation is such, that whereas the above-named _____ has been appointed, by the said Comptroller of the Currency, Receiver of "The _____ National Bank of _____," in the _____ of _____, and State of _____, in pursuance of the power and authority vested in him by law, and under the provisions of section 1 of an act of Congress entitled "An act authorizing the appointment of receivers of national banks, and for other purposes," approved June 30, 1876:

Now, if the said _____ shall well, truly, and faithfully perform and discharge all and singular the duties imposed on him by law as such Receiver, and shall duly and properly pay over, according to law, any and all moneys that may come into his hands or under his control by virtue of said receivership, then this obligation to be void; otherwise, to be and remain in full force and virtue. * * *

MEMORANDUM.

WHAT CONSTITUTES A PRESENTATION OF A REFUNDING CLAIM TO THE COMMISSIONER OF INTERNAL REVENUE, UNDER SECTION 3228 OF THE REVISED STATUTES:—CORRECTION OF SAVINGS-BANK CASE, *ante*, 195, AND DAVIS' CASE, *ante*, 258.

The Revised Statutes contain this provision:

“SEC. 3228. All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued * * *.”

Regulations were prescribed by the Secretary of the Treasury on this subject as follow:

“Claims for the refunding of taxes erroneously assessed and collected should be presented through the collectors of the respective districts upon blank form No. 46. * * *

“The collector should keep a perfect record, in a book furnished for the purpose, of all claims presented to the Commissioner, and must certify as to each claim, whether it has been before presented or not.

“Where the case of an appeal involves an amount exceeding two hundred and fifty dollars, and before it is finally decided, the Commissioner of Internal Revenue will transmit the case, with the evidence in support of it, to the Secretary of the Treasury for his consideration and advisement.

“No claim or application for the refunding of taxes will be entitled to consideration by the Commissioner of Internal Revenue, unless the same shall be filed with him either prior to August 4, 1871, or within two years from the date of the payment of the tax.” (Circular No. 79.)
* * * * *

The Solicitor-General, in an opinion which was approved by the Attorney-General July 15, 1873, (14 Op., 615,) held that—

“Where the application [referred to above] is delivered to a collector or other local internal-revenue officer, it is *not* a presentation of the claim *to the Commissioner* such as is contemplated” in the statute above cited.

The First Comptroller adopted the same construction in Savings-Bank case, *ante*, 195, and in Davis' case, *ante*, 258.

The question came before the Supreme Court at October term, 1881

in the case of *The United States vs. The Real Estate Savings-Bank of Pittsburgh*, and the Court held:

"That the lodging of the appeal [claim] made out in due form with the proper collector of internal revenue for the purpose of transmission to the Commissioner in the usual course of business, under the requirements of the regulations of the Secretary, was in legal effect a presentation of the appeal to the Commissioner. The effect of the regulation was to designate the office of the collector of internal revenue as a proper place for the presentation of the appeal."*

* When this case was heard by the Supreme Court, William Lawrence for the United States, by request of the Solicitor-General, submitted an oral argument, in which, among others, he made the following points:

The claim is barred because not presented at the office of the Commissioner of Internal Revenue in Washington within two years.

1. The statute says such claim "*must be presented to the Commissioner of Internal Revenue.*" (Rev. Stats., 3220.) The Commissioner has an office "*in the Department of the Treasury*" (Rev. Stats., 319), and this "*shall be at the seat of Government*"—Washington. (Rev. Stats., 233.) The claim is to be "*settled and adjusted in the Department of the Treasury.*" (Rev. Stats., 236.) Effect is to be given to the words *as they are*, "not importing * * * words * * * not found there." (92 U. S., 751.) A presentation at Pittsburgh is not a presentation "*in the Department of the Treasury*," nor, as the *statute* requires, "*to the Commissioner of Internal Revenue.*"

The "*Treasury of the United States*" is "*in the Treasury building*," and *there* the Treasurer performs his duties. (Rev. Stats., 3591.)

Banks are required to make returns for taxation "*to the Treasurer.*" (Rev. Stats., 5215.)

If, for the convenience of the banks, a regulation is made (Rev. Stats., 161) *permitting* them to make reports "*through*" a sub-treasurer, are the banks relieved of the duty to still make them "*to the Treasurer?*"

2. The "*regulation*" does not change this. It says, claims "*should be presented through the collector.*" "*Should*" is not "*shall*," and, if so, "*through*" is not "*to.*" This *permits* presentation *through* a collector, but contemplates presentation *to* the Commissioner. The regulation is to be construed in harmony with the statute, which gives the *claimant a right* to present *directly* to the Commissioner, but permits a collector to aid him.

3. The Commissioner had no power to receive the claim after two years, and any action thereon was *ultra vires*. An officer cannot waive the positive requirement of the statute. (*Andrae vs. Redfield*, 12 Blatchf., 407; *United States vs. McKnight*, 94 U. S., 179; 12 Pet., 527.) The claim is, as said in *Kaufman's case* (96 U. S., 570), "*impeached for * * * mistake.*"

4. The duty imposed by statute on the Commissioner cannot be delegated to a collector. *Delegata potestas non potest delegari.*

It is the right of the claimant to have the privilege of presenting his claim at the office of the Commissioner.

5. A claimant cannot impose a duty on a collector to receive a claim. Official duties are fixed by law. (*Ames vs. Huron, L. & B. Co.*, 11 Mich., 147; *Cooley, Const. Lim.*, [363, 451].)

With this single exception, it is believed that the points decided in the cases reported in this volume are decided correctly, and they remain unchanged by any decision of a court of last resort.

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DUPLICATES FOR DESTROYED OR DEFACED UNITED STATES BONDS.

Since the publication of the Regulations in relation to United States bonds in this volume, Appendix, Chapter XIII, pages 560, 574–578, the following has been issued :

C I R C U L A R .

Destroyed and Defaced Bonds and Lost Registered Bonds of the United States.

1882.
DEPARTMENT No. 83. } TREASURY DEPARTMENT,
Secretary's Office. } *Secretary's Office, Washington, D. C., July 20, 1882.*

The following provisions of the Revised Statutes of the United States, and the regulations thereunder, concerning relief in cases of bonds of the United States which have been defaced, destroyed, or lost, are published for the information and guidance of all concerned :

DUPLICATES FOR DESTROYED OR DEFACED BONDS.

SEC. 3702. Whenever it appears to the Secretary of the Treasury, by clear and unequivocal proof, that any interest-bearing bond of the United States has, without bad faith on the part of the owner, been destroyed, wholly or in part, or so defaced as to impair its value to the owner, and such bond is identified by number and description, the Secretary of the Treasury shall, under such regulations and with such restrictions as to time and retention for security or otherwise as he may prescribe, issue a duplicate thereof, having the same time to run, bearing like interest as the bond so proved to have been destroyed or defaced, and so marked as to show the original number of the bond destroyed and the date thereof. But when such destroyed or defaced bonds appear to have been of such a class or series as has been or may, before such application, be called in for redemption, instead of issuing duplicates thereof, they shall be paid, with such interest only as would have been paid if they had been presented in accordance with such call.

SEC. 3703. The owner of such destroyed or defaced bond shall surrender the same, or so much thereof as may remain, and shall file in the Treasury a bond in a penal sum of double the amount of the destroyed or defaced bond, and the interest which would accrue thereon until the principal becomes due and payable, with two good and sufficient sureties, residents of the United States, to be approved by the Secretary of the Treasury, with condition to indemnify and save harmless the United States from any claim upon such destroyed or defaced bond.

DUPLICATES FOR LOST REGISTERED BONDS.

SEC. 3704. Whenever it is proved to the Secretary of the Treasury, by clear and satisfactory evidence, that any duly registered bond of the United States, bearing interest, issued for valuable consideration in pursuance of law, has been lost or destroyed, so that the same is not held by any person as his own property, the Secretary shall issue a duplicate of such registered bond, of like amount, and bearing like interest and marked in the like manner as the bond so proved to be lost or destroyed.

SEC. 3705. The owner of such missing bond shall first file in the Treasury a bond in the penal sum equal to the amount of such missing bond, and the interest which would accrue thereon, until the principal thereof becomes due and payable, with two good and sufficient sureties, residents of the United States, to be approved by the Secretary of the Treasury, with condition to indemnify and save harmless the United States from any claim because of the lost or destroyed bond.

Parties presenting claims on account of a coupon or registered bond of the United States which has been destroyed wholly, or in part, or on account of a registered bond which has been lost, will be required to present evidence showing—

1st. The number, denomination, date of authorizing act, and rate of interest of such bond; whether coupon or registered; and, if registered, the name of the payee. In the case of a registered bond, it should also be stated whether it had been *assigned or not* previous to, or since, the alleged loss or destruction, and, if assigned, by whom, and whether assigned in blank or to some person specifically by name: and if assigned in the latter manner, the name of the assignee should be given.

2d. The time and place of purchase, of whom purchased, and the consideration paid.

3d. The place of deposit of the missing bond; whether or not any person or persons, other than the owner, had access thereto; and in the event of its having been accessible to other parties, their affidavits, in addition to that of the owner, should be furnished, showing their knowledge of the existence of the bond, and of the fact of its loss or destruction.

4th. The material facts and circumstances connected with the loss or destruction of the bond.

5th. It should be shown by the affidavits of credible persons, if practicable by United States officers, that the statements of the claimant as set forth in his affidavit are worthy of the confidence of this Department, and that he is the identical person named in the application.

In all cases the evidence should be as full and clear as possible, that there may be no doubt of the good faith of the claimant. Proofs may

be made by affidavits duly authenticated, and by such other competent evidence as may be in the possession of the claimant.

GENERAL FORM OF AFFIDAVIT.

Personally appeared before me, a notary public in and for the city of _____, county of _____, and State of _____, the subscriber, _____, who, being duly sworn according to law, deposes and says, that _____ is the lawful owner of the following-described registered bonds of the United States, viz:

No. _____, for \$_____, act of _____, 18—, _____ per cent.; and No. _____, for \$_____, act of _____, 18—, _____ per cent., registered in _____ name on the books of the Treasury Department, _____, 18—; that no assignment or transfer of said bonds [or either of them] has been made by _____ or _____ attorney, either in blank or by a specific assignment, or in any manner whatever; that said bonds have not, nor has either of them, by hypothecation, pledge, loan, or otherwise, passed from the custody or control of said _____ with [his or her] knowledge or consent; that the said bonds were stolen from _____, the said _____, at _____, on the _____, by some person or persons unknown to _____; and that due diligence has been exercised in endeavoring to recover the said bonds, without success. [State what has been done.]

_____,
of _____, _____.

Sworn to and subscribed before me, this, the _____ day of _____, A. D. 18—; and I certify that said _____ is personally well known to me to be the identical person mentioned in the foregoing affidavit.

_____,
Notary Public.

[Notarial Seal.]

Affidavits and other evidence pertaining to the claim should be transmitted to the Secretary of the Treasury. Upon receipt of such documentary evidence it will be referred to the First Comptroller of the Treasury Department for his decision as to its sufficiency. The applicant will be advised of the decision as soon as it is reached: If it be favorable to such applicant, a blank indemnity-bond will be forwarded to him for execution; and when this indemnity-bond shall have been duly executed, returned to the Department, and approved by the First Comptroller and the Secretary, the relief desired will be granted.

A duplicate in lieu of a lost registered bond will not be issued within six months from the time of the alleged loss.

The interest on an uncalled registered bond will be paid to the payee thereof, even though the bond has been lost or destroyed.

These regulations do not apply in any way to coupons lost or destroyed, which have been detached from the bonds to which they belonged, as no relief, in such cases, can be granted under existing laws.

CHAS. J. FOLGER,
Secretary.

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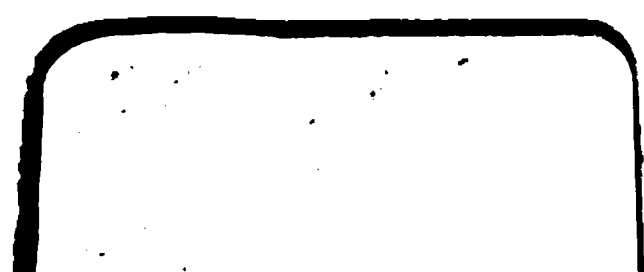
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